TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 541.

THE CITY OF SAN JUAN, PLAINTIFF IN ERROR,

vs.

THE ST. JOHNS GAS COMPANY, LIMITED.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

FILED MAY 16, 1906.

(18,239.)

(18,939.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 288.

THE CITY OF SAN JUAN, PLAINTIFF IN ERROR,

vs.

THE ST. JOHN'S GAS COMPANY, LIMITED.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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1 In the District Court of the United States for Porto Rico.

THE SAINT JOHN'S GAS COMPANY, LIMITED, Plaintiff,
v.
THE CITY OF SAN JUAN, Defendant. } Assumpsit.

Declaration and Bill of Particulars.

Filed October 3rd, 1901.

The Saint John Gas Company, Limited, a foreign corporation, organized under and by virtue of the laws of England, complain of the City of San Juan, a municipal public corporation, organized and existing under the laws of Porto Rico, of a plea of trespass on the case in assumpsit; for this, to wit: that heretofore, to wit, on the 16th day of September A. D., 1900, the said defendant was indebted to said plaintiff in the sum of fourteen thousand, six hundred dollars and sixty cents, U. S. currency, for the furnishing of and lighting with gas and petroleum 485 lamps in and about the streets of said defendant city and its suburbs, and for the keeping of the same in perfect order and condition and for the supplying of all the necessaries therefor before that time, to wit, from the first day of November, A. D. 1899, and continuously every month thereafter up to and including said date, by the said plaintiff, done, performed, kept and executed faithfully in favor of and for the said defendant and at its special instance and request and express promise to pay therefor; and also in a like sum for the work, labor, care
2 and diligence of said plaintiff before that time done, performed and bestowed in and about the business of the said defendant, and for it, and at its like special instance and request; and also in a like sum for money before that time lent and advanced to and paid, laid out and expended for the said defendant, and at its like special instance and request; and also in a like sum for other money by the said defendant before that time had and received to and for the use of the said defendant and also in a like sum for interest in favor of plaintiff due from defendant and before that time foreborne, and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, undertook and faithfully promised the said plaintiff to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And for this also, that theretofore, to wit, on the day and year aforesaid, the said defendant accounted with the said plaintiff of and concerning divers other sums of money before that time due and owing to the said plaintiff, and then in arrear and unpaid; and upon such accounting the *the* defendant was found in arrears and indebted to the said plaintiff in the further sum of fourteen

thousand six hundred dollars sixty six cents, U. S. currency, and being so found in arrear and indebted, the said defendant in consideration thereof undertook and then faithfully promised the said plaintiff to pay it the said sum of money in this count last mentioned when the said defendant should br thereunto afterwards requested.

3 Nevertheless the said defendant not regarding its several promises and undertakings hath not as yet paid the said plaintiff the said several sums of money or any or either of them, or any part thereof, although often requested so to do, but to pay the same hath hitherto wholly neglected and refused and still doth neglect and refuse to the damage of the said plaintiff of fourteen thousand six hundred dollars and sixty six cents ($14,600.66) U. S. currency, and interest from the 16th day of September, A. D., 1900, and therefore it brings this suit.

(Signed) HERBERT E. SMITH,
Solicitor for the Plaintiff, The Saint John Gas Company, Ltd.

Bill of Particulars.

Plaintiff's bill of particulars of the items and dates referred to in its complaint herein.

1899.			
Nov.	30.	To public lighting for the month—485 lamps at $3	1,435.20
		" police station lighting July to Nov. inc	50.87
Dec.	31.	To public lighting for the month *idem*	1,440.00
		" renovating of piping at corner of Mr. Finley by order	15.15
		" renovating of syphon in front of ice factory by order	2.40
			$2,943.62
1900.			
Jan.	31.	To public lighting for month *idem*	1,439.10
Feb.	28.	" " " " " "	1,439.30
Mar.	31.	" " " " " "	1,437.00
	"	Gas consumed in Cuarto de Socorros, P. Tierra	20.00
Apr.	30.	" public lighting for the month—*idem*	1,435.20
May	31.	" " " " " " "	1,436.40
"	"	" interest	216.69
June	31.	" public lighting month of June *idem*	1,432.60
July	3.	" renovation of pipes in session room of ayuntamiento	21.00
"	31.	" public lighting for the month	1,431.00
"		" Cuarto de Socorros—Apr. to July 1900 inc.	16.00

4

Aug.	31.	To public lighting for month—*idem*		1,483.40
"	"	To Cuarto de Socorros acc't *idem*.....		4.00
Sept.	16.	" public lighting—end of concession.....		716.00
"	"	" Cuarto de Socorros.....		2.00
"	"	" lime, coke, coal and gas seized by the city.		115.00
"	"	" interest.....		363.99
Sept.	16 to			
Sept.	16, '01.	Interest—@ 12 %.....		1,635.28
				17,598.08

CREDITS.

1900.					
Jan.	31.	By cash.....		$500.00	
M'ch	31.	" "		600.00	
"	"	" " (Finlay syphon)....		2.40	
May	9.	" "		600.00	
Jun-	30.	" " (police station ac't).....		66.02	
Jul-	14.	" " (Cuartto Socorros).....		32.00	
Aug.	31.	" "		500.00	
"	"	" "		25.00	
				$2,325.42	
Aug.		" rent of ground.....		662.00	
				$2,987.42	
Sept. 16, 1901.		Balance in favor of plaintiff.....			14,600.66

(Signed) HERBERT E. SMITH,
Solicitor for Plaintiff.

Pleas. Filed October 14th, 1901.

In the District Court of the United States for the District of Porto Rico.

THE SAINT JOHN'S GAS COMPANY, LIMITED,
v.
THE CITY OF SAN JUAN.

Now comes the defendant, by its attorne-s Pettingill & Keedy, and for plea to the common counts in said declaration contained says that it never promised as in said counts alleged.

5 2. And for further plea to the common counts aforesaid defendant says that it never was indebted as in said declaration alleged.

3. And for a further plea to the common counts aforesaid defendant says that the plaintiff at the commencement of this suit

was, and still is, indebted to the defendant in an amount equal to the plaintiff's claim for defaults committed by the plaintiff in its contract to furnish lights to the defendant, which amount the defendant is willing to set off against the plaintiff's claim.

(Signed) PETTINGILL & KEEDY,
Attorneys for Defendant.

UNITED STATES OF AMERICA, *District of Porto Rico,* } *ss:*

Manuel Egozcue, being duly sworn, says that he is alcalde of the defendant City of San Juan and that the foregoing pleas are true.

(Signed) M. EGOZCUE. [SEAL.]

Sworn to and subscribed before me this 14th day of October, 1901.

(Signed) RICARDO NADAL, *Clerk.*

Replication.

Filed November 6th, 1901.

In the District Court of the United States for Porto Rico.

THE SAINT JOHN GAS COMPANY, LMTD.,
vs.
THE CITY OF SAN JUAN.

The replication of the above named plaintiff to the plea of the above named defendant.

This plaintiff says that the said defendant in said action is
6 indebted to *him* as alleged in said declaration, but denies that *he* owes to the said defendant the sum as alleged in paragraph 3 of defendant's plea, or any sum whatever, and this *he* prays may be inquired of by the country.

(Signed) HERBERT E. SMITH,
Solicitor for Plaintiff.

UNITED STATES OF AMERICA, *District of Porto Rico, City of San Juan,* } *ss:*

L. A. Scott, being duly sworn upon his oath, says that he is manager of the plaintiff corporation in the above entitled action; that he has read the foregoing replication and that the allegations therein contained are true.

(Signed) L. A. SCOTT. [SEAL.]

Subscribed and sworn to before me this 5 day of November, 1901.

SAMUEL SALOMON,
Deputy Clerk.

Motion for Order Requiring Defendant to Furnish Bill of Particulars.

Filed November 7th, 1901.

In the District Court of the United States for Porto Rico.

THE SAINT JOHN GAS COMPANY, LIMITED,
vs.
THE CITY OF SAN JUAN.

Now comes Herbert E. Smith, attorney for the plaintiff above named, and moves this honorable court for an order requiring the defendant City of San Juan to furnish said plaintiff with a bill of particulars or itemized account of defendant's alleged claim as set up in its plea to the plaintiff's declaration herein.

San Juan, P. R., November 7th, 1901.

HERBERT E. SMITH,
Solicitor for Plaintiff.

7 *Entry on Motion for Bill of Particulars.*

In the District Court of the United States for Porto Rico, November 7th, 1901.

Present: The Honorable Wm. H. Holt, judge.

ST. JOHNS GAS CO. LIMITED,
vs.
THE CITY OF SAN JUAN.

Now comes H. E. Smith attorney for the plaintiff herein and moves the court that the defendant furnish a bill of particulars which is consented to by the attorney for the defendant and 30 days given to furnish same, and the cause continued.

Additional Plea.

Filed April 16th, 1902.

In the United States District Court for Porto Rico.

THE SAINT JOHN'S GAS COMPANY, LTD.,
v.
CITY OF SAN JUAN.

Now comes the defendant, by its attorneys Pettingill & Keedy, and for additional plea to the declaration herein says that as to the

sum of five thousand one hundred and ninety six dollars, and eighty eight cents, part of amount claimed in this action, the plaintiff had on the 22nd day of June, 1900, assigned and transferred its said claim for value to the mercantile firm of Mullenhoff and Korber whereby said firm of Mullenhoff & Korber became
8 the absolute owner of the alleged indebtedness of this defendant as to said before mentioned sum; and that after the last pleading in this action, to wit: on or about the 19th day of March, 1902, the defendant cancelled and discharged said claim as to said amount by payment of the same to said firm of Mullenhoff and Korber.

PETTINGILL & KEEDY,
Solicitors for Defendant.

UNITED STATES OF AMERICA, }
District of Porto Rico. }

Manuel Egozcue, being first duly sworn, says that he is the mayor of the city of San Juan in whose behalf the foregoing plea is interposed, and that the matters and things in said plea set forth and alleged are true.

M. EGOZCUE. [SEAL.]

Sworn to and subscribed to before me this 15th day of April, 1902.

RICARDO NADAL,
Clerk U. S. Dist. Ct.

Joinder in Issue.

Filed Oct. 12, 1902.

In the District Court of the United States for Porto Rico.

SAINT JOHN'S GAS CO., LTD., }
vs.
CITY OF SAN JUAN. }

Joinder in issue.

Now comes plaintiff and as to the plea of the defendant by which it places itself upon the country doth the like.

DEXTER & HORD AND
HORTON & CORNWELL,
Att'ys for Pl'ff.

9 *Entry of Trial.*

In the District Court of the United States for Porto Rico, Nov. 5, 1902.

Present: The Hon. Wm. H. Holt, judge.

ST. JOHN'S GAS CO. v. CITY OF SAN JUAN. } C. L. # 79.

This cause coming on regularly for trial both sides answer ready. The jury is impanelled and sworn to try the case and hears all the evidence in the case.

Entry of Verdict.

In the District Court of the United States for Porto Rico, Nov. 6, 1902.

Present: The Hon. Wm. H. Holt, judge.

ST. JOHN'S GAS CO. v. CITY OF SAN JUAN. } C. L. # 79.

Resumed. The jury hears the argument of counsel, the charge of the court, retires and thereafter returns into court the following verdict,

"We the jury find for the plaintiff the sum of $8,761.35 in damages.

P. VAN FLEET, *Foreman.*"

Judgment.

In the District Court of the United States for Porto Rico, Nov. 13th, 1902.

Present: The Hon. Wm. H. Holt, judge.

ST. JOHNS GAS CO. v. CITY OF SAN JUAN. } C. L. # 79.

10 This action came on regularly for trial. Said parties appeared by their attorneys Dexter & Hord and Herbert E. Smith, for the plaintiff, and Messrs. Pettingill & Keedy, attorneys

for the defendant. A jury of twelve persons was regularly impaneled and sworn to try said action, who after hearing the evidence, the arguments of counsel and charge of the court, retired to consider of their verdict, and subsequently returned into court the following verdict:

"We the jury find for the plaintiff the sum of $8,761.35 in damages.

P. VAN FLEET, *Foreman.*"

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that the said plaintiff, The St. Johns Gas Company, have and recover of the said defendant, The City of San Juan, or municipality, the said sum of eight thousand seven hundred and sixty one dollars and thirty five cents ($8,761.35), together with its reasonable costs incurred in this action, to be taxed by the clerk, and for which let execution issue.

11 *Petition for Writ of Error.*

Filed Nov. 26, 1902.

In the United States District Court for Porto Rico, October Term, A. D. 1902.

SAINT JOHN'S GAS COMPANY, LIMITED, *vs.* CITY OF SAN JUAN. } Assumpsit. No. 79.

The City of San Juan, defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury and the judgment entered on the 13th day of November, A. D. 1902, herein, comes now by its attorneys N. B. K. Pettingill and J. M. Keedy and petitions this court for an order allowing said defendant to prosecute to the honorable, the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided; and also that an order be made enlarging the time for preparing and presenting its bill of exceptions to the rulings of the court herein and fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said Supreme Court of the United States.

And your petitioner will ever pray.

N. B. K. PETTINGILL,
J. M. KEEDY,
Attorneys for Defendant.

12 *Entry Extending Time for Settling Bill of Exceptions.*

In the District Court of the United States for Porto Rico, Nov. 26th, 1902.

Present: The Hon. Wm. H. Holt, judge.

ST. JOHN'S GAS COMPANY, LTD.,
v.
CITY OF SAN JUAN. } C. L. # 79.

Now comes the defendant herein by its attorneys N. B. K. Pettingill and J. M. Keedy and files its petition for writ of error to the Supreme Court of the United States, whereupon the court
13 makes the following order and directs that it be filed and entered of record.

Order.

The defendant, City of San Juan, having this day filed its petition for a writ of error from the decision, and judgment thereon made herein, to the honorable, the Supreme Court of the United States, and also praying that an order be made enlarging the time for preparing and presenting its bill of exceptions and fixing the amount of security which defendant should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this court be suspended and stayed until the determination of said writ of error by said Supreme Court of the United States, and said petition having this day been duly allowed;

Now, therefore, it is ordered that said defendant be allowed a period of ninety days for preparing and presenting to the court its bill of exceptions in this cause, and that, upon said defendant giving and filing with the clerk of this court a good and sufficient bond in the sum of fifteen thousand dollars, to the effect that if the said defendant and plaintiff in error shall prosecute said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and virtue, that all further proceedings in this court be, and they are hereby, suspended and stayed until the determination of said writ of error by said Supreme Court of the United States.

14 *Bond.*

Filed Dec. 20, 1902.

Know all men by these presents that we, the Municipality of San Juan, Porto Rico, as principal, and Fidel Guillermety and Manuel Egozque, as sureties, are held and firmly bound unto the Saint

John's Gas Company, Limited, a corporation existing under the laws of the Kingdom of Great Britain and Ireland, in the full and just sum of fifteen thousand dollars ($15,000.) to be paid to said Saint John's Gas Company, Limited, its successors or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals this 13th day of December, A. D. 1902.

Whereas lately at a session of the United States district court for Porto Rico in a suit pending in said court between said Saint John's Gas Company, Limited, plaintiff, and said Municipality of San Juan, defendant, a final judgment was rendered against the said municipality of San Juan on the 13th day of November, 1902, for the sum of $8,761.35 and the said Municipality of San Juan having obtained the allowance of a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Saint John's Gas Company, Limited, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that is the said Municipality of San Juan shall prosecute said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

M. EGOZCUE,
Alcalde of San Juan.

Attest: RAMON NEGRON, *Secretary.*

F. GUILLERMETY. [SEAL.]
[MUNICIPAL SEAL.] M. EGOZCUE. [SEAL.]

15 UNITED STATES OF AMERICA, }
District of Porto Rico. }

Fidel Guillermety and Manuel Egozque, being duly sworn, each for himself deposes and says that he is one of the parties who has signed the foregoing bond as surety for said municipality of San Juan, and that he is worth in visible property within the district of Porto Rico subject to levy under execution more than the sum of fifteen thousand dollars over and above all legal liabilities and exemptions.

M. EGOZCUE.
F. GUILLERMETY.

Sworn to and subscribed before me this 13th day of December, 1902.

RICARDO NADAL,
Clerk U. S. District Ct.,
[SEAL.] By FRANK ANTONSANTI, *Deputy.*

Approved to operate as a supersedeas, this 20 day of December, 1902.

WM. H. HOLT, *Judge.*

16 *Writ of Error.*

Certified copy filed Dec. 20, 1902.

UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

The President of the United States to the honorable the judge of the United States district court for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said United States district court for Porto Rico, before you, between St. John's Gas Company, Limited, a corporation existing under the laws of the Kingdom of Gt. Britain and Ireland, plaintiff, and The City of San Juan, a municipal corporation organized and existing under the laws of Porto Rico, defendant, manifest error hath happened, to the great damage of the said defendant, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, the 26th day of November in the year of our Lord one thousand nine hundred and two.

RICARDO NADAL,
Clerk U. S. District Court, District of Porto Rico,
By FRANK ANTONSANTI, *D. C.*

Approved this 26th day of Nov. 1902.

WM. H. HOLT, *Judge.*

[Endorsed:] Copy writ of error.

17 *Bill of Exceptions.*

Filed Feb. 24, 1903.

Be it remembered that at a term of the United States district court for Porto Rico, held in the city of San Juan on the 5th day of November, A. D. 1902, a cause therein pending, wherein The St. John's Gas Company, Limited, a corporation existing under the laws of Great Britain and Ireland, was plaintiff, and The Municipality of San Juan, a municipal corporation of Porto Rico, was defendant, came on to be heard before the Honorable William H. Holt, judge of said court, at which time came the said parties by their respective attorneys, Messrs. Dexter & Hord and Horton & Cornwell for the plaintiff, and Messrs. Pettingill & Keedy, for the defendant; and thereupon the said issues in manner aforesaid joined between the said parties came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said issues upon the merits of said cause in manner aforesaid joined.

18 And thereupon, the plaintiff, to maintain the issues upon its part, produced as a witness one L. A. SCOTT, who, after being duly sworn, testified as follows:

Examination by Mr. HORD:

My name is L. A. Scott; I reside at the gas works in the city of San Juan, and also have a house in the country; I am acquainted with The St. John's Gas Company, Limited, the plaintiff in this suit, because I was for many years its engineer and manager; the company was engaged in making gas and lighting the city of San Juan under a contract with the city which expired on the 15th day of September, 1900; the company furnished light to the city under this contract, which was in writing, up to the morning of the 16th of September, as I stated. This paper which you show me is the original contract.

Counsel for plaintiff at this point offer said contract in evidence, and it is admitted without objection.

A translation of said contract, in the English language is as follows:

19 EXHIBIT A.

Copy Translation.

In the noble and loyal city of St. John's Baptist of Porto Rico on 21st day of August A. D. 1875, before me Antonio M. de Aldrey Esq. of the city, public notary of this district with residence here, pre-

sents witnesses that shall be named at the conclusion of this instrument, there appeared from one part Joseph Nadal y Rey, Esqr., of this city in his condition as general and special attorney for this act of making this document for Julio y Steinacher residing in the town of Ponce, in this island according to the power given in the said town on the 25th day of July last, before the public notary of that district Joaquin Mayoral Esqr. which said document contains all the necessary clauses and powers for making this contract with the obligations and guarantees stipulated and which will be mentioned with a copy of said power on pages 236–237 of the proceedings referred to will be made mentioned; and being sufficient and legally examined by the lawyer Francisco de Paula Acuña Esqr. to which I, the public notary, certify; and for the other part Luis Ma. Casanave Esqr. member of the excellent corporation of this city, acting as acting attorney general of said corporation; having both parties exhibited their personal cedules as residents here of the first part, which was given to Mr. Nadal on the 19th of February last stub No. 12 issued by the municipal inspector of the Marina,
20 Joseph Maymo Esqr.; and of the second part Casanaves on the 13th of February counterfoil No. 25 by the inspector Juan Blaset Esqr., which I return to the interested parties, after having recorded them in this office as it is ordered; and both parties have asserted to be free in their civil rights and legal capacity for this contract, the first part- Joseph Nadal y Rey Esqr. stated that on the meeting that took place at the corporation of this city on the 17th day of March, 1874, it was resolved to put up to public tender the service of the public lighting of this city, including the district of the "Marina"; and consequently they proceeded to organize the administering conditions that would govern on the said contract, which was approved by the corporation at the meeting of 8th of June determining for the taking place of the doings of this act on the first of October of the same year 1874, ordering at the same time to be published in the Official Gazette of this province and in the principle and most important cities of Europe, island of Cuba, and in the United States of America, with the object of having more offers. And when this had taken place Mr. Steinacher made a petition on the 12th day of November last, page 112 of the proceedings reference, making propositions as mentioned in said writing, and in view of the same, and in consequence of those presented by Mr. Geo. Olney, of New York it was resolved in the meeting of the 15th of March of the same year to name a commission of the municipality to report on the said proposi-
21 tion. This being done by the said commission, the information proposing modifications were taken into consideration and the conditions published, the said reforms were accepted at the meeting held on the 6th of April p. 155 and it was resolved at the same time that a new form of conditions be proposed and disregarding those of Mr. Steinacher and Mr. Olney, so that as soon as modifications approved by the civic body within 15 days, that were to be advertised for the new conditions of tender, it would take

place according to the new conditions that would be drawn up as stated. That afterwards this resolution, the said Steinacher presented other conditions to undertake under his charge the service of the public lights as it appears from page 156 to 179 of the said proceedings; and in view of what it expressed, in his petition it was resolved in the meeting of the 19th of the before mentioned month of April what follows: "On account of the proposition presented by Julio y Steinacher. Esqr. to take under his charge the public and private lights of this city; I mentioned and read each article of the proposition presented by Mr. J. Steinacher in order that he might take charge of the public lighting of this city, and after reading each article which are entirely the same as those that were published on the 8th of June 1874, but as some modifications are in favor of the municipality; considering that in the said propo-
22 sitions there exists that one that the corporation should sell the gas works and all that constitutes the establishment of the gas works, "to-day entirely useless;" considering it of great convenience to transfer these works, the municipality not doubting that the service would be done with more advantage when the gas works belonged to a private individual, who would always have them in a perfect state of order. After what had been proposed had been well discussed, the counsel resolved to publish for the 4th time the tender for the public lighting, fixing the period of 15 days; but by adopting the propositions proposed by Mr. Steinacher although before they could be carried out there must be solicited the competent approbation of the provincial commission according to the 3rd clause of the art. 61 of the municipal decree, as it is on the subject of selling the gas works, as it is already stated are entirely useless, to fulfil the important service for which it is designed. "That in force of the resolution of the counsel it was solicited from the excellent provincial deputation the approval of the sale of the gas works, and accessories there contained, this being done at the meeting of the 30th of said April, according to the communication of the deputy of the 3rd commission, dated the 3rd of May, in page 181 of the proceedings, which reads thus: "Provincial deputation of Porto Rico. Third commissary financial—number 263. The permanent commission of the excellent provincial deputation in ordinary meeting which took place on the 30th of
23 last month, among other particulars it was discussed and agreed as follows:" In the proceedings which took place before the corporation of this city on account of the sale of gas works for public lights; considering that from the propositions made to the municipality by Mr. Julio E. Steinacher there is the sale of the gas works and all it contains, at present, considering the said gas works and accessories are now useless, and on this account, and belonging to a private individual, it would produce a better result if this were kept in good order which would prove — advantage to the public service, the proposed sale is useful and convenient; and having seen 2nd clause art. 61 of the municipal decree, it was resolved to authorize the before mentioned sale with the necessary formality of public

tender for public lighting. Let it — notified, the contents of which I forwarded for your information: Porto Rico third day of May 1875, Elias de Triarte. To the president of the excellent corporation of this city, and Mr. Nadal continues to state that his constituent Mr. Julio E. Steinacher being aware of the modifications that have been introduced by the municipal corporation in the proposals of his petition made on the 19th day of April last to take under his charge the public and private lights of this city, he made known to the president of the excellent corporation that he was disposed to accept them, except in the 5th condition made by the municipality about
the paying of cash down the value of all the coal existing in
24 the gas works the day that they would deliver to him the
establishment, he not having sufficient funds for the disembursement, he being disposed to pay the value of this coal at the price of invoice and expenses of the same after a grace of some months; and that which is proposed by Mr. Steinacher being accepted by the excellent corporation for the purpose of facilitating the tender for the public lights, although harmonizing the interests of the corporation, so that they will not suffer in any way it was agreed at an extraordinary meeting on the 21st day of the said month of April to amend the 5th condition declaring that the contractor will pay for the cost by 12 installments at the end of first month to be agreed upon, paying besides ½ % per month on balance of the value of the said coal, and before mentioned expenses, with the deduction of every payment. That in virtue of what has been explained and of the said approval granted by the permanent commission of the excellent provincial deputation for the sale of the buildings and accessories which constitutes said gas works, it was agreed by the excellent corporation in the meeting on the 10th day of May last to commission the acting engineer architect to proceed with urgency to appraise the buildings and effects of the gas works, to which act he will be accompanied by the deputy in charge of the public lights Antonio Ache Esqr. and the result of said operations
must be stated. That in consequence of what has been stated
25 the architect Domingo Rodrigues Lesmere Esqr. having in
the meantime arrived at this island in the said month of May proceed to appraise the said buildings and the fixed apparatus and the useful articles of the gas works as it is in page 185 to 189— inclusive of the said proceedings, and it is as follows:

* * * * * * *

The particulars of the inventory as found in the original are not put here, except the grand totals.

Recapitulation:	Pesetas.
Value of the buildings	19176.25
Fixed and loose materials in the gas works	48908.85
Fixed materials in the city	10624.
Total amount	158709.10

The present appraisement amounting to 158709.10 pesetas or $31741.82 of the currency in commerce.

PORTO RICO, 26*th* of *May*, 1875.

The municipal architect,
(Signed) DOMINGO SESMERO.

The foregoing insertion correspond- faithfully with original of its contents in the proceedings from where reference has been taken, of which I the undersigned notary certify.

And the authorized Mr. Nadal continues saying that in consequence of the said appraisement made by the municipal
26 architect with the supervision of the municipal deputy in charge of the public lighting, the excellent corporation at an ordinary meeting of the first of last June agreed that the tender for the said building accessories etc. and of the public lights be published fixing the 15th of July and the hour of 2 o'clock p. m. before the council and establishing at the same time in the same resolution the express condition that persons who offer to tender must each one make his separate proposal that would embrace the acquisition of the buildings and other articles that are annexed and also the public lights of the city reducing the proposals to the already prescribed conditions which reference was made at the commencement and with this express object will be inserted in the official gazette of the province. That in virtue of the deliberation of the excellent municipal corporation said tender was published in the official gazette of the province with the insertion of the conditions by which it has to be guided as it appears in the gazette of the 18th of June last No. 68 page 212 of the referred to proceeding and the 18th of July stated for the letting of the tender having arrived, this took place at 2 o'clock p. m. for said purpose as the sole offer was made by Julio E. Steinacher Esqr. who presented with due promptness his propositions the following being the act of tender.

Proposals of Mr. Julio E. Steinacher.

Julio E. Steinacher engineer director of the gas works of Ponce resident in that town being instructed of the announcement
27 published by the municipal alcalde of the city of San Juan Porto Rico on the 8th of June 1875, of the instructions to tender of 27th May 1869 and the requisites that are required for the act of adjudging in public tender of the service of the public lights of this city for 25 years that will commence from the definite approval by the corporation likewise of the buildings which constitute the gas works including the fixed apparatues and effects proper of the same works and of all the obligations and right that are noted in the documents that will govern the contract, he binds himself to take for his account the service of the lighting for the sum of $3 monthly in currency for each lamp and the acquisition of the said

buildings apparatues etc. for the sum of $22000.00 currency only making to the published conditions the following alterations. First. The definite guarantee that he offers in two brick houses as his property in the district of "La Marina" that are worth more that 1000 dollars, declaring that one of them is entirely free of all liens and the other has only a first mortgage in favor of the excellent corporation as a guarantee given, when his contract was made. Second. As the excellent corporation has stopped the gas works more than one month and on this account it is quite impossible to commence working at once, he will only begin to pay for what he will purchase (condition fourth of the proposals) at the end of the
28 first year after the gas works being in use continuing afterwards by 5th parts as it is stipulated. Third. Equal condition of 6 months to pay by 12 installments the existing coal to-day in the store on account of the same stoppage of the gas works before mentioned. Fourth. In the condition 34th it shall be understood that by the determination before mentioned it is impossible to commence making gas until the greater part of the works be done, he will supply kerosene for the public lights of the 340 lamps at the price of $3.50 each without being subject to fines unless it be by his negligence it being well understood that the subscriber will hurry the works so as to curtail the bad lighting. Fifth. In no city of importance do they now use the system of having insulated corks that are considered useless, the contractor will have the right to place them or not if he thinks it necessary for the best service. Sixth. The undersigned does not accept the condition 44th for not being in the propositions that he presented on the 19th April last and which was mostly approved by the excellent corporation. With these small modifications the undersigned accepts all the conditions published in the gazette of the 8th of June 1875.

Porto Rico 15th of July 1875.

(Signed) J. E. STEINACHER.

The conditions to which reference is made and which the contractor Mr. Steinacher speaks of *is* as follows:

Conditions of the Corporation.

The excellent corporation of this city of San Juan Baptist of Porto Rico in consequence of the resolution made by the
29 same, the 15th of July next at 2 o'clock p. m. has been appointed for the adjudging by public tender the service of the public lights of this city and also with the competent approval of the excellent provincial deputation the sale of the buildings that constitute the gas works including the apparatues and effects of the same being an indispensible condition that the bidder for the lighting will be for the said buildings apparatues, &c., &c. it being well understood also that the sum fixed for the public lights will be of three dollars in currency for each lamp in the city including the

district "de la Marina" having about 340 lamps, which number is to-day the lighting of this city and that the value of the said buildings, apparatues &c. according to the appraisement made by the municipal architect are to be seen at the secretary's office of the excellent corporation which amounts to $31741.83 currency in the following form.

Buildings	$19835.25
Fixed and loose materials at the gas works	9781.77
Fixed material in the city	2124.80
Equal	$31741.82

The contract will take place according to the instructions of 26th March, 1869 in the city hall, been exposed at the secretary's office for the public knowledge, all the documents that will have
30 to govern in the contract. The propositions will have to be made exactly to the annexed model and will have to be presented under sealed cover, only allowing for propositions half an hour before the act. The proposals will have to contain a document to prove that the bidder has deposited as provisional guarantee in the municipal chest of this city the sum of $2000.00 so as to have a right in the tender.

Propositions will be null if they be wanting in any requisite and those concerning the lighting that will exceed the amount already fixed of three dollars monthly for each lamp. At the commencement of the bidding it will be read the said instructions and in case that it would be verbal been the propositions the same the least out bidding will be of 100 dollars. Porto Rico 31st of May 1875. The Alca-de Ulpiano Valdes.

Form of Propositions.

Mr. N. N. of — being informed of the advertisement made by the municipal alcalde of the city of San Juan Porto Rico in — of the instructions of tender of 27th of March 1869 the requisites that are required for the public adjudging of the service of the public lights of this city for 25 years which will commence on the definite approval by the corporation and likewise of the buildings that
31 constitute the gas works including the fixed apparatues and effects that belongs to the same works and of all the obligations and rights that are marked in the documents that will govern the contract he engages himself to take on his account the service of the lights for the sum of — and the acquisition of the said buildings and effects for —

Date and signature. The cover of the propositions will read thus "Propositions for the adjudging of the service of the public light for the city of San Juan Baptist of Porto Rico and the buildings of the gas works apparatues and effects of the same."

Conditions.

Administrative conditions for the sale of the buildings that constitute the gas works, including the apparatus and effects of the same, as also the public light, and this for 25 years, which act will take place on the 15th day of July next, and the lights will commence to count from the moment that the contractor be notified of its approval that the corporation will grant till equal date of the year 1900, being necessary the same approval for what concerns the buildings and effects mentioned.

1st. In the execution by contract of the public light of this city during 25 years from the day that it will take place the following administrative and economical prescriptions will govern.

2nd. The contractor to whom the service be granted will have 15 days after the approval of the tender being notified to
32 produce the definite guarantee and make the document of the contract.

3rd. The guarantee will be of $6000 in cash or $9000 on a house of this city 1st mortgage to the satisfaction of the municipality. If the guarantee be in cash the $2000 that were deposited previously for the bidding of the public lights will form a part of his guarantee changing the receipt of acquittance for another that will express that it is for that said subject and if made in a house the deposit will be returned when the document of guarantee has been made which copy he will have to deliver to the municipality at his expense.

4th. It is an indispensible condition that the contractor for the lighting be also for the buildings machinery pipes and all the materials of the gas works which appraisement has already been mentioned and are to be seen at the office of the municipality. The price which the contractor will pay for them and will be paid in 5 parts or instalments at the end of every year.

5th. The contractor after having obtained the possession of the establishment by public document will have the right to pay to the municipality the coal that will be existing by its just value of invoice and expenses made on same, making the payment by 12 installments at each end of the month that will correspond; and besides he will have to pay ½ % of the value of said coal and expenses with the deduction at each payment.

33 6th. The contractor will have the right in every month due to be paid off the numbers of lights that he will furnish for the public lighting according to a certificate to be given by the president of the corporation.

7th. If the contractor should transgress any of the prescriptions contained for the present service the alcalde will exact the discount that will correspond with the suggestion to the relative articles and the value of the said discount will be made cash from the first certificate that will be issued. It being understood that he renounces

beforehand all kinds of rulings, ordinary laws, and special privileges.

8th. The payment to the contractor will be made in the circulating foreign money in commerce for the value that is received without any premium that will equalize it to the Spanish official current money.

Faculty Conditions for the Service of the Public Lights, Condition of the Gas for the Lightings.

1st. The gas will be made by coal without using any other material (prima)

2nd. The gas must always be well purified and will give a clear and white light without reddish or fuliginous mixture.

Its illuminating power will be such that with an elastic force coming forth from the burners measured in the manometer by a column of water from 12 to 15 mil-ometers would give for the burners light to consume 115 litres per hour with an intensity of
34 light equal to a Brim lamp that would consume 42 gram-es of oil per hour.

3rd. The minimum pressure of gas that will prevail in the pipes in the highest part of the city is of 12 mil-imeters indicated in the foregoing rule which can be verified with the manometers in any burner of public light or private.

4th. Ammoni-cals waters and tar produced by distillation will be placed in recipient perfectly impermeable. The tar, ammoni-cal waters, and lime that have been used for the purifying, will have to be taken away in shut casks. The evaporation of the residue of sand and the burned tar will be done in the furnaces and ash-holds when it will not produce smoke or bad smell outside.

Conditions for the Private Lightings.

5th. The contractors will be in the duty to supply with gas in all the pipes of conduction to every person that will ask for it under the conditions that they may agree between themselves.

6th. The contractor will have the exclusive privilege for the placing of the branches to the meter if they desire it but not of the interior branches and apparatus.

7th. The price of the branches and its installation will be at the expense of the party that may wish it.

8th. The gas sold to private individuals with meter cannot exceed as maximum of 22½ cents the cubic measure or $5 each thou-
35 sand cubic feet.

Special Conditions for the Public Light.

9th. The corporation grants to the gas constructor the exclusive rights to place new pipes to conduct the gas under the ground of public ways as they are to-day established in the place where they are located and to establish in the same shape in all the places that may be considered necessary in consequence of the increase of the public light first obtaining consent and approbation of the municipality.

10th. The lamps of public light which may be about 340 with the city and the district of "La Marina" will be lighted half an hour after the sun-set, till half an hour before the sunrise according to the hours that may be marked in the almanac and must be lighted with convenient anticipation so that all the lamps will be lighted at due hour in the evening and the extinction will not commence till the corresponding hour of the morning.

11th. In case that the corporation should wish an extraordinary lighting for public rejoicements or any other the contractor will be obliged to supply it giving him notice 24 hours before, and the price that he will have the right to exact will be ¼ of a cent for each hour and each burner for that purpose will have to consume 115 litres of gas per hour.

12th. The corporation will pay the expenses of the pipes
36 and apparatues of the extraordinary light that may be requires and it will be at the contractor's expenses the joining with the principal pipes and carrying them to the doors of the building where the lights will have to be put up.

13th. The corporation will also pay the expenses of apparatus interior tubes for the ordinary lights of the municipal establishment and the gas that will be consumed in the same will be at the rate of ten cents of a dollar the cubic measure having a meter, or 1¼ of cent per hour for each burner that will consume 115 litres in the same time if there were no meter, excepting the ordinary lights of the city hall, public prison, and the palace of the governor general no matter the number of lights which the contractor will be obliged to give free.

14th. The contractor will be obliged to keep up the valves that are in different places to isolate or communicate at free will, the various zones of the city in case of accidents, as well as to establish on his account those that the municipality may deem by the increase of the public light.

15th. Besides the streets public places and promenade grounds that are at present lighted with gas the contractor will be obliged to place the gas conductors burners lamps lamp posts chandeliers tubes valves and in general all the material necessary for public light in all the places that the corporation will indicate, only paying for this the expenses of the lights.

37 16th. The municipality reserves to itself the rights to have the choice of the model of the lamps and chandeliers that henceforth will have to be placed for the establishment of this city.

17th. All changes for the collocation of lamps will be made by the contractor if it suit the corporation, paying him the expenses.

18th. If by any cause of the municipality having to undertake the water works the public pavement or any other work would require to deviate the pipes and apparatus of the lightings, the contractor will be in the duty to do these deviations and works which expenses will be paid by the municipality by appraisement, if no agreement is made beforehand.

19th. The pipes of the principal conductors and of the branches that will be established will have to be placed in direction and depth indicated by the municipal architect, the depth of these conductors will be the maximum one metre.

20th. It will — on the contractor's account the expenses to light and put out the lights to clean and keep in order the apparatus that will be in use for the public light and generally the old and new material as likewise the expenses of labor and material that he may need for the lightings conservation and repairs of the building apparatus etc. and without any exclusive expenses than those
38 expressly excepted in this contract, also, it be on his account the fixing of the pavements in the places where will have to do works for the putting up of new lamps or any other cause.

21st. The chandeliers and lamps will have to be clean and washed when it will be necessary and painted in green every year, keeping them always in good order and cleanliness to the satisfaction of those commissioner by the municipality. In case the corporation think it convenient to number the lamps the contractor will be obliged to do it and also to keep in good order the numbering before mentioned the corporation will only pay the first numbering.

22nd. In case of any damage or robbery of the pipes apparatus &c. the contractor will reclaim the damages against the defendant if known, the municipal administration not to be called as guarantee.

23rd. The contractor will immediately repair the leakage of gas in the pipes keys and other accessories and in all cases will have to do it on the first notice of the municipality. And also will have to replace immediately at his expense the broken glasses and all other articles for the service.

24th. The contractor will be obliged to have constantly a depot of coal, not less than 300 tons, pipes, burners, and the necessary articles to repair immediately the fault that may be found in the lamps and all that is relative to the public lighting.

25th. The contractor or his attorney will have to conform
39 to the orders that will be transmitted to him by the alcalde in all that concerns the regularity of the service of the lighting always employing good laborers.

26th. The employés of the active service will have to carry a medal with a number.

27th. The alcalde or his delegate will have the rights to visit the

gasometer and its accessories as often as they may judge convenient to be certain that it is working in all its parts in a satisfactory manner and according to the conditions of this contract.

28th. The contractor binds himself to fulfil exactly his duties under penalty of damages which he will pay out of the amount to be received monthly by him for his contract, which penalties will be as follows.

First. The contractor will become liable to a penalty of 12½ cents of a dollar for every light per night when the flame has not the marked intensity. Second. When no lamp has not been lighted in the city in the hours marked by the contract the penalty will be 12½ cents for the first half hour and for each light and of 50 cents for the second half hour and for each light the penalty will be 25 cents of a dollar per light for every half hour later when the fault without being total shall be in one or more lamps.

29th. The contractor will suffer the penalty of one dollar
40 and 25 cents for every 5 days that shall pass without repairing the fault of each burner that is not of the model marked by the corporation.

30th. The penalty will be 25 cents of a dollar doubling it progressively for every 5 days that shall pass without repairing the faults after having been notified by the alcalde. First, for every apparatus that placed in the open air where there shall be a leakage of gas in the pipes if not repaired immediately. Second. For each chandelier or lamp that has not been washed in due time. Third. For each chandelier or lamp which has not been repainted in the time stated. If the leakage of the gas takes place in the pipes placed in rooms of private houses, or the buildings of the municipality the contractor will incur the penalty of $10 and if he does not repair the fault during the 24 hours after having been notified by the interested party the penalty will be doubled for every 24 hours that he delays to correct the fault being besides liable to the civil responsibility for damage and injury that may take place by explosion or suffocation and other consequences caused by the leakage.

31st. In case that the gas should not have the degree of purety or the illuminating power prescribed in the second conditions the alcalde will notify the contractor and if in the 24 hours after
41 the notice the contractor has not rectified the said fault he will suffer a penalty of $50 if notwithsyanding this penalty the contractor does not obey the notice of the alcalde he will suffer the penalty of $100 in the second 24 hours and so successively the value of the penalty be doubled for every 24 hours that shall pass without the fault being remedied. When he shall not have carried out any works ordered by the corporation in a reasonable time that he will fix himself and after having heard the inspector architect and the said contractor a penalty will be imposed on him equivalent to 20% of the value at which the work has been estimated. The want of coal in the depot prescribed by this contract will be punished with a penalty of $2000 and double if the fault should

not be rectified within thirty days; and analogously in the successive repetitions.

Thirty-second. The penalties will not take place in cases where the faults would arise from circumstances beyond his control (fenza Mayor) absolutely independent of all omission or negligence on the part of the contractor who would have to justify himself.

33rd. The penalties for faults in the service and the supply of gas to the public will be imposed by the alcalde without appeal, making it payable in the manner indicated by the 29th condition.

34th. If by extraordinary cases of unfor-seen circumstances beyond his control (fuerza Mayor) the contractor should find
42 himself in the impossibility to light temporarily the whole or part of the city he will be obligated to accelerate as much as possible the repairing and accomplish what will be necessary to remedy the fault, and in the meantime to procure without delay to light lamps by oil or kerosene in equal numbers to gas burners that could not be lighted; well understood that this indulgence will terminate after the necessary time has passed for the repairs that will be required. Whilst the contractor is establishing the gas lighting in the city, with the conditions that are marked in art. 2nd and 3rd that the gas must be completed during one year's time fixed in art. 368 he is obliged to supply with kerosene those lamps that are not to-day illuminated with gas in the different streets and public places of this city and the district of "la Marina" in consequence of the bad state of the pipes, until the contractor shall finish the necessary works to establish the gas well understood that the lamps with kerosene will be lighted and put out at the same hours as marked in art. 10th and it will be paid to the contractor $3 in current money monthly for each, which is the fixed price for all and being at the contractor's expense the apparatus for lightings with kerosene.

35th. The contractor will receive the buildings gasometers fur--aces establishments pipes tubes and all other constructions and effects annexed to the gas works by public document as is
43 before mentioned in the state that they are to-day.

If in consequence of this to liable him to furnish the public and private lightings of the city it would be necessary to build new works whatever they may be and whatever their importance or to make any repairs to obtain the supply for lights to fulfil the necessary conditions, it will be at his exclusive account all the expenses that may be incurred with this express object, the whole remaining as the property of the contractor but he will always have to present the plan and project.

36th. The contractor binds himself not — extract from the corporation any anticipation of money, but a concession of one year's time will be given to him to do all the necessary works at the expiration of which time the buildings must be in a perfect state and the public lights supplied in accordance with all the stipulated conditions in the 2nd and 3rd art. concerning the gas, and if not so done the contract considered annulled with the loss of the guarantee

given and the improvements of the establishments will remain in favor of the municipality without being subject to the penalties or fines during the year before stated and do his utmost to avoid the inconvenience that exists to-day in the public lights.

37th. The contractor binds himself to keep the existing
44 syphons in the places where they are to-day unless that at the moment of placing the new pipes that he has to put up, he may deem it necessary to increase or diminish for the better service of the lighting.

38th. At the termination of the present concession the corporation will have the right to renew the contract for the public lighting of the 340 lamps or that may then exist at the rate of $3 for each lamp or light well understood that from hereafter the contractor obliges himself not to raise the price established to-day for the present lighting and engages himself to lower the price if possible taking into consideration the price of coal at that time.

39th. The corporation will take all the measures that it may judge necessary to guarantee the exact fulfilment of all the articles of this contract and especially to secure that the gas is well purified, and the means of producing it its illuminating power and the quantity consumed by burners correspond to the compromise made by the contractor. For this purpose will be named an inspector who besides the faculties designed in this contract will have those that the corporation will constitute him for this object among them to examine and see for himself at the hour that he may think convenient all the buildings and interior and exterior dependencies the manner and precaution of making the gas and what he may deem necessary concerning his duty and the contractor is obliged to furnish him with all the required information asked for.

45 40th. For the judicial effects of this contract it is understood that the domicil of the contractor must be the same as that of the corporation, where he must reside or have an attorney.

41st. When the corporation require to increase the number of lamps that exist today it is the duty of the contractor to make said works and the municipal funds will pay for each light $3 at the same rate as the others.

42nd. In case that the corporation for some cause should not be able to contract for the new service of the public and private lights at the conclusion of the present contract the contractor will be obliged to continue under the same terms for six months giving him notice three months in advance.

43rd. It will be in the power of the corporation to re-cind the contract in the following cases.

First. When by fault of the contractor the penalities within 3 months amount to $3000.

Second. When it should be proved that by negligence or abandonment by the contractor should result a danger of explosion in the works or any other injury through negligence.

Third. When the contractor shall incur the third penalty for want of spare coal as stated in the contract.

Fourth. When for three consecutive nights he should leave without lighting the city or a part of it where there exist at least
46 thirty lamps in case that this would not be caused by circumstances beyond his control (fuerza Mayor).

44th. If it should suit the interest of the corporation that will have the right to acquire at any time of the property of the buildings and all concerning the lighting paying to the contractor its value by appraisement of both parties of the said establishment and what is annexed to it; but if before the termination of the time fixed for this contract should happen the death of the contractor without leaving a person duly authorized to continue the contract with the municipality at the fifth day the corporation may take possession of all that concerns the lighting buildings etc. and by this the contract is annulled they will proceed to a valuation of the works by appraisers appointed who may represent the contractor and the corporation and a third one in case of disagreement. If the municipality shall be debtor to the contractor it will pay its debt in just proportion as it is establish- in the 1st art. or by the 5th parts at the end of each year but if the contractor should be debtor, the credit of the corporation will be due and it will be made payable with the contractor's property which will — specially mortgaged as will be assigned in the public document of guarantee to which he will consent for the fulfilment of this compromise.

Porto Rico 31st of May 1875.

The alcalde, ULPIANO VALDES.

And the act of this tender an- object of this instrument is
47 found at page 217 of the proceedings already mentioned anliterally is as follows.

In the faithful and loyal city of St. John Baptist of Porto Rico.

That on the 15 July 1875 at 2 o'clock p. m. the counsel of the municipality of Tender met with the object of adjudicating the service of the public lights of this city with hydrogen gas also for the sale of the buildings that constitute the gas works including the apparatus and all effects of the same works which tender was announced in the Official Gazette of the province on the 8th day of June last. No. 68—the act took place at the hour marked observing all the formalities of the instructions of the 27 March 1869. Having past the first half hour and opening the only propositions presented it was read and resulted the proposition signed by Mr. Julio E. Steinacher offering to take charge of the said service for the amount of $3 currency for each lamp and the possession of the said buildings apparatus etc. for the sum of twenty two thousand dollars in currency asking for some variations to be made in the conditions published which the interested party presents are as follows.

First. That the definitive guarantee which he offers is of two houses of brick district of "la Marina" his property which says to

be worth "ten thousand dollars" but he advise that one of
48 the houses is entirely free from mortgage and the other has on a first mortgage in favor of the excellent corporation having been a guarantee in his first contract.

Second. That as the excellent corporation has one month since stopped the gas works it is impossible to have them at work at once he will begin to pay the price of what he has bought (condition 4th) at the end of the first year after the works are in working order and continue so on by 5th parts as is stipulated in said condition. Nevertheless the contractor will have the right to discount if convenient to his interests the payments at the current price of the market.

Third. That he proposes equal consideration for 6 months for the payment by 12 installments of the balance of coal at the store in consequence of the same stoppage of the works.

Fourth. That it is understood in the 34th condition that on account of the determination before mentioned it is impossible to make gas until most of the works are done he will supply the public lights with kerosene to the three hundred and forty lamps at the rate of $3–51/100 each without being subject to fines unless it should be for negligence of the director and he will hurry the works to avoid this bad lighting.

Fifth. That in no city of importance are used to-day the system of keys isolators it being considered useless, the director will have the right to place them or not if he consider it necessary to the best service.

49 Sixth. That judging the 44th condition injurious to his interests he does not accept it. Consequently the counsel considered that although Mr. Steinacher does not bind himself strictly to the conditions published there exists basis which leads him to present his proposition with the proposes amendment and considering for the said reasons and especially that the city is lighted partly with kerosene and the rest with gas as the 34th condition reads—it has been modified, as the lighting with gas has been suppressed, in consideration of the reasons given by Mr. Steinacher the counsel after having well examined this important affair agreed to submit it to the consideration of the excellent corporation. This act was concluded and signed by the members that composed the counsel and Mr. Steinacher. I the secretary certify—

VALDES.
ANTONIO ACHA.
G. LEDESMA.
E. STEINACHER.
JOSE ARAGON Y HUERTAS, *Secretary.*"

The foregoing insertion and what has been produced in this document correspond faithfully with its respective originals and the proceedings which I the undersigned notary testify, and the authorized party Mr. Nadal y Key in his representation as general attorney of Mr. Steinacher continues saying that having reported the act of

tender, the extraordinary meeting of the excellent corporation of the next day 16th of said month of July and the municipal counsel considered that they were not accepted, for not being equal to the conditions published and the amendment proposed by Mr. Steinacher they agreed to reject them and annul the said act of tender nevertheless the excellent corporation deposed thinking it convenient with the object of helping the tender of this important service that cannot be delayed any longer for the bad estate of the public light that the municipal architect should make a second appraisement of the buildings that constitute the gas works apparatus etc. annexed and also to modify the conditions in the following terms.

The paragraph or second part of the 4th condition will be in this form.

"The price of the sale to the best bidder to be paid in 5th parts at the end of each year commencing the first payment 2 years after having notified the approval by the excellent corporation and the 5th condition to pay the coal 6 months after the approval.

The 44th condition will be as follows: If by unfor-seen circumstances in this contract the contractor will see himself the necessity to *sale* the gas works with all that is annexed to it if it suit the interests of the excellent corporation will have the preference for its acquisition by appraiser from both parties.

The contractor cannot sell the buildings nor transfer the contract over to any person without the approval of the excellent cor-
51 poration but if before the termination of this contract should happen the death of the contractor without leaving a person duly authorized to continue the contract with the municipality after the elapse of 5 days' time the corporation will take possession of all that will concern the lightings buildings etc. and by this the contract is annulled, they will proceed to the valuation of the works by appraisers appointed by whom may represent him and the corporation and a third one in case of disagreements. If the municipality should be debtor to the contractor then will pay its credit in just proportion as it is established in the 4th condition or by 5th parts at the end of each year beginning the first payment two years after the appraisement but if the contractor should be the debtor the credit of the corporation will be due and it will be made payable with the contractor's property which will specially — mortgaged as will be assigned in the public documents of guarantee to which he will consent for the fulfilment of this compromise. Moreover in the conditions not having foreseen the expense caused to the municipality the acquisitions of the apparatus and receiver for lighting with kerosene the city it was agreed to add another condition that the contractor should pay to the excellent corporation the total amount of the sum laid out in the said apparatus and receivers and with their alterations after being known and approved the second valuation of the buildings apparatus etc. of the gas works the architect
52 will have to perform to publish the conditions fixing ten days for the tender to take place before the counsel. "To

this time the positive part of the agreement of the excellent municipal corporation taken at the extraordinary meeting on the 16th of the before mentioned month of July observing in the continuation of the agreement page 220 of the mentioned proceedings a notification signed by Mr. Nadal dated the 3rd inst. which is as follows:—"August 3rd Mr. Nadal being present as general attorney of Julio E. Steinacher Esqr. and having been notified of this general resolution declared that he accepted it and agreed with the explanation that was made in the resolution of the 2nd inst. signing this with me the secretary—

JOSE NABA Y REY.
JOSE ARAGON Y HUERTAS, *Secretary.*

That in consequence of what is there stated Mr. Nadal continues saying that a communication was passed to the municipal architect to proceed to the 2nd valuation of the buildings pipes and effects annexed to the said gas works having also the supervision of the deputy who was named for that purpose and in this state of things the contractor Mr. Steinacher replied to the excellent corporation proposing the following modification that as in pages 225 and 226 of the proceedings of reference. "Julio S. Steinacher Esqr. engineer director of the gas works of Ponce and residing at that town notified the result obtained in the public tender for the public light
53 of this city with the respect to Your Excellency states, that desirous to take charge of the gas enterprise and to construct it as corresponds to this city he is disposed if the excellent corporation will accede to this petition to take the gas works such as it is published in the Gazette of the 8th of June for the sum of thi-ty one thousand seven hundred and forty one dollars eighty two cents in currency and take under his charge the public lights for the sum of three dollars monthly (in currency) for each lamp the number being three hundred and forty lamps only making some variations to the published conditions as follows:"

1. The definite guarantee that he offers is of the 2 brick houses in the district of "la Marina" of his property and which are worth more than ten thousand dollars advising that one of them is entirely free from mortgage and the other has only the first mortgage in favor of the excellent corporation and it having served as guarantee to his 1st contract.

2nd. That is the excellent corporation has one month since stopped the gas works it is impossible to have them at work at once he will begin to pay the price of what he has purchased (condition 4th) at the end of the first year after the works are in working order and will continue to do so by 5th parts as stipulated in said condition.

3rd. That he proposes the same terms for six months for the payment by 12 installments of the balance of coal left at the
54 store in consequence of the same stoppage of the works.

4th. The undersigned does not accept the first part of the 44th condition in regard to the acquisition of the gas works by the excellent corporation but he accepts the second part therefore he

begs Your Excellency to accede to this petition on the understanding that he will construct the gas works of this city to the highest standard supplying efficient lights.

Porto Rico, 19 July 1875.

J. E. STEINACHER.

He presented his official document as a foreigner given to him by the general government which is to be seen with his proposals—

Porto Rico, 19th July 1875—

I. ARAGON Y HUERTAS, *Secretary.*

And having presented this petition to the excellent corporation in an ordinary meeting of the same day 19th of July the resolution that is at page 222 of the said proceedings was agreed to which literally is as follows:—

The president said that in consequence of result of the last meeting on the 16th instant for the tender for the public lights for this city including the buildings that constitute the gas works apparatus and its accessories of the same Mr. J. E. Steinacher had delivered to him the petition presented and it was read and after having made the interested party appear to hear his explanation and to terminate the difficulties that might occur in which petition the said Mr. Steinacher expresses himself disposed to the acquisition of the said buildings &c. as published in the Official Gazette of the 8th of June
55 last for the amount of thirty one thousand seven hundred and forty one dollars 82/50 cents in currency and to take under his charge the public light at three dollars monthly for each lamp at same currency according to the price published of the excellent corporation accepts the following modification. First. That the definite guarantee that he offers will be 2 brick houses in the district of "la Marina" of his exclusive property which he says are worth ten thousand dollars and he observe- that one of the houses is entirely free of mortgage and — other is subject only to the first mortgage in favor of the corporation it having been a guarantee to his former contract. Second. That as the excellent corporation has one month since stopped the gas works and that it is impossible to have them at work at once he will begin to pay the price of what he purchases (condition 4th part 2nd) at the end of the first years after the works are in working order and will continue to do so by 5th parts as stipulated in the said condition. Third. That he proposes the same terms for six months for the payment by 12 installments of the balance of coal at the store in consequence of the same stoppage of the works and fourthly. That he does not accept the first part of the 44th condition in regard to the acquisition of the gas works by the excellent corporation but he accepts the second part. The president opening the discussion and having examined the particulars of Mr. Stein-
56 acher'- petition relative to the definitive guarantee the council agreed to accept it taking the two houses as such if they should be approved by the municipal architect at the said value, that besides the liquidation that has to take place of the accounts

that are quite unsettled between the excellent corporation and Mr. Steinacher in consequence of his former contract for public lights they should be able to raise the mortgage with which it is charged in favor of the municipality. The members Archa, Carmona and the Syndic. Mr. Sedesma being appointed to form the commission that has to liquidate those accounts which will have to be done immediately with the interested party. In regard to the modifications proposed by him in the 4th and 5th conditions relative to the manner in which to pay the value of the buildings apparatus etc. of the gas works also the balance of the coal in store. The council regarding in the same sense the proposals of Mr. Steinacher resolved to reform the said conditions as is evident by the act of the extraordinary meeting of the 16th inst. in the event of its being approved by the excellent provision deputation to whom this alteration was to be submitted in order to facilitate the tender of lights: It was agreed to accept them as he proposes and also the suppression of the first part of the 44th condition as it was resolved to change it by resolution taken on the 16th and thinking it to be to the best in-
57 terest and security of municipality in regard to this contract it is resolved. "That if the contractor during the time of this contract should intend to sell the gas works or transfer the present tender, he must have the approval of the excellent corporation, as the mortgage guarantee and all the buildings that constitute the gas works will remain security for the contract. Finally the municipality considering that the modifications made although of little importance in themselves add to the importance of the contract. Considering that the tender has been published more than three times in this island in the peninsula and abroad without any satisfactory result and in consideration of the urgent necessity to perform the present contract, considering the bad state of the lights of this city, it is resolved that after having well examined this affair, to accept all the propositions made by Mr. Steinacher the sole bidder that has presented himself for the tender at the price fixed after having the approval of the excellent provisional deputation to whom the proceedings will be remitted for this object." After this resolution appears the following notification.

August the 3rd.—Present Mr. Nadal general attorney of Julio E. Steinacher and being informed of the resolution stated that he accepts it in all its parts and agrees with the explanation of the resolution of the 2nd inst. signing with me the secretary Jose Naduly Rey Jose Aragon y Huesta secretary what is here inserted
58 agrees with the original which I the notary certify. And Mr. Nadal continues saying that having examined the liquidation of accounts mentioned in the last meeting it resulted that Mr. Steinacher was debtor to the excellent corporation in all their accounts for a balance of two hundred and three dollars ($203) in foreign currency and it can be seen in page 228 the council giving the approval to the said liquidation by a resolution taken on 26th of last July that also that by what was resloved in the meeting of the 19th July the municipal architect proceeded to the examination

and appraisement of the two houses close to the gas works property of Mr. Julio E. Steinacher and it appears by the report given by the said architect page 232 the "Municipal Works" No. 27 I have proceeded in accordance of the order received from Your Excellency dated 20th instant to the examination and appraisement of the two houses close to the gas works of this city the property of Mr. Julio Steinacher marked with the letters A D. in the attached plan of the 24th of last May in the proceedings of the appraisement of the gas works. The one marked letter A is near square of 23 metres and 8 centimetres in depth by 22 metres and seventy-one centimetres in front to the street of Isabella the 2nd having surface of 524 metres and 15 centimetres square. The house marked with the letter D separated from the other by a narrow street of 5 metres and 90 centimetres wide gives a face to the same street of 3 metres 37 centimetres and approaches the gasometer it has the figure of an
59 irregular hectagonal having a square surface of 212 metres thirty centimetres. The building of both houses is of brick with partition wall with roof at 4 metres 50 centimetres in height with corresponding doors and windows all in good condition considering the state of the building value of the land and its situation I appraise the one marked with the letter A at thirty thousand pesetas or six thousand dollars and the one marked with the letter D at twenty thousand pesetas or four thousand dollars in currency.

Porto Rico 22nd of July 1875.

The municipal architect, DOMINGO SESMERO.

To the president of the corporation of the city.

"That in view of the said appraisement and taking in consideration what has been stated by the substitute alcalde Mr. Hompart in the meeting which took place on the 26th July it was disposed to unite the antecedents relative to the sites on which the two houses of Mr. Steinacher are built so as to decide the matter. That the said antecedents taken at the meeting of the 2nd instant and resulting that the two above mentioned sites belonged to the Government it was agreed to recommend to the architect to make a new appraisement deducting the value of the said sites and for this object communication was passed to him. That in continuation of the last meeting there is a communication from the third commissary (deputy) of the excellent provincial deputation with an agreement of the permanent commission of the day before that date the 23rd of the said month of July with the approval
60 of the tender made by Mr. Steinacher of the service of the lights likewise of the buildings apparatus belonging to the gas works and disposing of the subject relative to the guarantee offered by the same Steinacher that being in the exclusive competence and responsibility of the excellent corporation to accept and to proceed to the appraisement of the buildings offered and to the liquidation of the accounts cancellation of the mortgage of which reference was made before being always understood that until the

guarantee is given and accepted Steinacher cannot take possession of the buildings and effects in virtue of the acquisition of the said tender. And having reported the minutes of the meeting of excellent corporation on the 2nd instant the president said that in the resolutions of 19th July mentioned an error was made for it was determined that, "If the contractor during the time of the contract should intend to sell the gas works or to transfer the said tender, he would have to di it with the approval of the excellent corporation" but as Mr. Steinacher observed that he would not accept this condition as it would be a serious obstacle to the sale or transfer of the tender of he should wish to do so before the approval of the corporation was known and in whose favor he would wish to transfer it and he calls the attention of the municipality to this subject, so as to avoid future difficulties and the corporation admitting this argument as laid before the president agreed that in the said act of 19th of
61 July it should be explained "that what Mr. Steinacher said (and the corporation agreed to) should be authorized and he should be free to transfer this contract to whomsoever he may think fit, giving notice thereof to the municipality and for the better security of the transfer and sale leaving besides the guarantee mortgage the buildings pipes and all that is annexed to the gas works, in favor of the person to whom the tender is transferred, so that he may give the same guarantee and bind himself to fulfil the same conditions as Mr. Steinacher himself. And lastly the municipality disposed that Mr. Jose Nadal y Rey as general attorney of Mr. Steinacher should be notified of these resolutions of which reference is made so that he may accept them, as well as those mentioned on the 16th and 19th of July which as he has already verified in the notification inserted dated the 3rd instant and with the only modification stated, and that they should give account to the excellent provincial deputation asking for its necessary approval of its having already sanctioned the tender that was obtained by Mr. Steinacher. That Mr. Nadal informed of this agreement of the proceedings of which he was notified on the 4th instant page 244 agreed to accept them in all their parts, in name and as general attorney of Mr. Julio Edmondo Steinacher signing the same in witness thereof. That in consequence of the last mentioned resolution a communica-
62 tion was passed to the excellent provincial deputation asking for the approval stated, representing Mr. N-dal y Rey on the 4th instant in Mr. Steinacher's name declaring that he accepts and approves and ratifies the liquidation made on the 21st of last July, afterwards the following commun-cation was received by the third commissary of the excellent provincial deputation in which is inserted the approval of the agreement asked for.

"In an ordinary meeting which took place yesterday by the permanent commission of the excellent provincial deputation, it was examined and agreed as follows:—Re-examining the proceedings concerning the tender of the supply of the lighting by gas of this city and seeing the explanation of the excellent corporation in the act dated 2nd of August, considering that the modification stated

and that, that refer only to the right of the contractor to transfer the tender, and sell freely in nothing alter the principles of the transaction for the guarantee continues to subsist in favor of the municipality and in all cases the obligations acquired by Mr. Julio Steinacher would pass to the new possessor of the contract, the said corporation that corrects this omission in its acts relative to the free transfer or sale agrees to rectify the approval granted, it being understood with the modification stated in the said act of the 2nd instant. This information is given for your knowledge together with a report of the proceedings.

63 Porto Rico 7th of August 1875.

ELIAS TRIARTE.

That after this communication a communication was received from the municipal architect relative to the resolution of the 2nd instant as follows:

Municipal Works No. 33.

In compliance with order received in your communication of the 4th instant, I have proceeded with the appraisement of the two houses of Mr. Julio Steinacher near the gas works of this city without including the value of the sites on which they are built both houses are already described, their form, dimensions and conditions of their construction in my communication of 24th May last. Having made a new appraisement of what is built and what constitutes the buildings A / and D marked in the plan and taking in consideration the good state of the houses and the rent that they produce, it results that without including the sites, the value of the house marked with the letter A is 26000 pesetas or $5200 and of the house marked with the letter D the value of 1900 pesetas or $3800 in currency.

Porto Rico 9th of August 1875.

The municipal architect, DOMINGO SESMIRE.

To the president of the corporation of this city.

And having given account of both communications to the excellent municipal corporation in an ordinary meeting of the 9th it was agreed by the same to, that they were duly notified of the resolutions made by the permanent commission of the

64 excellent provisional deputation and in view of the communication of the municipal architect of the result of the new appraisement of the two houses offered by Mr. Julio E. Steinacher as a guarantee to answer for the fullfilment of this contract which two houses are valued in $9000 in currency equivalent to the 3rd condition, it was agreed to notify Mr. Steinacher or his attorney Mr. José Nadal-y-Rey that from henceforth his tender of the public lights of this city likewise the buildings and apparatus that constitute the gas works was accepted but it must be understood that before the excellent corporation would put him in possession of them

to commence the service of the public lights he must arrange with the municipal syndic, the corresponding documents of the definitive guarantee upon the two mentioned houses of his property in the district of "la Marina" already appraised by the architect and to pay besides $701.50/00 of the value of the apparatus and other accessories lately purchases by the excellent corporation for lighting the city with kerosene and $203 of the balance of accounts of his former contract according to the liquidation of which reference has been made, done by the commission of 25th July last so as to take off the mortgage that was on one of the houses; all was accepted
65 by Mr. Nadal as before stated and lastly the counsel deposed that after Mr. Nadal being notified to deliver the proceedings to the municipal syndic for the completion of the document of guarantee "that in consequence of the agreement Mr. Nadal was notified on the 11th inst. at page 251 of the proceedings of reference and he manifested that if the $2000 of the provisional deposit consigned by Mr. Steinacher in the municipal treasury to take part in the tender of the lighting and of the buildings etc. of the gas works, they could discount $804.50/00 and the balance remain as a deposit till the corresponding document would be completed giving him a separate receipt and with the $203 to raise the mortgage which is on one of the houses to which reference has been made. That in virtue of the manifestations made by Mr. Nadal the municipal depository was paid off the said $203 that Mr. Steinacher was in debtor for balance of accounts with the excellent corporation, and the municipal syndic, Mr. Casanave gave him a discharge in full dated 14th inst. before me the notary, and with this document the house that was mortgaged for the said responsibility was free of all charges as it will be seen further on.

Having no- made an exact narration of what has passed of the published tender by the excellent corporation of the city of
66 San Juan to contract the service of the lights through hydrogen gas that the said Mr. Julio Steinacher has taken under his charge, and Mr. Nadal attorney of the same and Mr. Luis Casanave acting as municipal syndic of the excellent corporation the contract document and guarantee as agreed by the meeting resolutions according to law being affirmed as they are, they agree and contract as follows:—

1st. First article. The grantor Mr. José Nadal y Rey as general and special attorney of this concession to Mr. Julio Edmundo Steinacher to rectify and repeat the propositions made by him to the excellent corporation of this city to supply the public and private lights and those of the district of "La Marina" which is annexed to it according to his last petition of 19th of July last where he accepts and accepted all the conditions for carrying out the said service with the only alterations that was mentioned in the same petition and were accepted by the excellent corporation, in the meeting of the 19th of the same July, that has also been inserted.

2nd. Second article. That in virtue of what is before said the contractor Mr. Steinacher is bound through his legitim-e attorney

Mr. Nadal to supply daily to this city and the district of "La Marina" the lights with hydrogen gas, and also thouse to provide persons, and buildings of which reference has been made in
67 the conditions inserted for the hours fixed by the same, without exacting for each public lamp now existing, and also those that may be added by the municipality for the sum — three dollars as already stipulated.

3rd. Third article. The present contract will last twenty-five years, the period for which the tender of the supply of the public lights has been granted, counting from the date that has been determined — resolutions of the respective meetings by the excellent corporation.

4th. Fourth article. The grantor Mr. Nadal binds his principal Mr. Steinacher to the exact fulfilment and execution of the present contract with the only alteration that he mentions in his last petition of 19th July last and agreement of the same date already mentioned under the penalties imposed in these conditions and which are inserted in this document.

5th. Fifth article. In conformity with what has been offered by Mr. Steinacher in the second part of his last petition and accepted by the excellent corporation he is bound and Mr. Nadal binds Mr. Steinacher to pay to the excellent corporation of this city $31,741.80 / 100 in foreign commercial currency which is the total amount of the buildings of the gas works fixed, and loose material in the city according to inventory and appraisement inserted in this docu-
68 ment by 5th parts after the 1st year that the works have been in working order and successively until the whole sum is paid.

6th. Sixth article. Also Mr. Steinacher is bound to pay to the excellent corporation the value of the balance of coal now in the store at the gas works according to his said petition of the 19th of July last and the resolutions taken by the corporation on the same date, beginning six months after the completion as requested in the 3rd part of his petition of 19th of July and for the same object the value must be declared in the proceedings of reference at the act of taking possession of the buildings and establishments, and all that Mr. Steinacher will acquire with due formality already determined in the 5th condition inserted.

7th. Seventh article. Suppressed as it is by the meeting of 19th of July the first part of the 44th condition which will be understood in the form stated in the meeting of the 16th of the said month the authorized Mr. Nadal by himself and in the name of his constituents confirming the acceptance of the 3rd instant with the explanation made in the last meeting determining "that if during the time of this contract Mr. Steinacher should intend to sell the said gas works or to transfer the present contract he may freely do so giving
69 notice to the excellent corporation in any case giving as guarantee besides the mortgage given by this document all the buildings that constitute the said gas works.

8th. Eighth article. All that has been related and established in

the conditions and meetings that has been accepted by the authorized Nadal in his representation with the modifications lately mentioned he binds his constituent Mr. Julio Steinacher with his present property and what he may hence acquire submission to and renunciation of laws, jurisdiction privileges and rights in his favor and with all prejudice to the rights of the municipality over all his property in the fulfilment of this contract he mortgages the two houses of his constituent which has already been mentioned and have been appraised by the municipal architect in the sum of nine thousand dollars ($9000) as described in the document as being built on sites belonging to the Government and of which Mr. Steinacher has paid to the treasurer its royalties and those of the municipality according to the receipt given by the collector Mr. Juan Fernandez and presented by Mr. Nadal which I return to him being his property, one of the said houses, which was transferred to him by Mr. Juan Emilio Turull in a public document made on the 25th November 1862 before the notary of this city Mr. Manuel Garcia Cazuelo as it was confirmed
70 in the prorogation of the contract for the said lights granted on the 5th of June 1861 before the notary Mr. Demetrio Guisenez y Moseno which copy is added to the proceedings formed in the year 1869 to tender the said service when the contract would terminate with the said Steinacher which I the notary certify that I had before me the said proceedings which I will return with others of which reference has been made to the municipal syndic, both parties have subscribed the present document and the other house that Mr. Steinacher mortgaged through his attorney to Mr. Nadal belongs to him in direct right he having constructed it at his own expense, and possessed it quietly and pacifically with the other house for more than 15 years in one of the two sites of the government for which he always paid the duties and the municipal syndic being satisfied of this fact as declared by Steinacher proving this the attorney Mr. Nadal with the certification by the mortgage register of this city that the two said buildings are now free of mortgage and responsibility which document I the notary collate under No. 3 and insertion in the copies of this document that I may deliver, and the said Mr. Nadal wishes this document to be registered at the mortgage office for legal effects. After what has been written, the municipal syndic Mr. Luis Casanave said he accepted in all its
71 parts the obligation of the said contractor Mr. Julio Steinacher and of his attorney in his name and he binds for his part the excellent municipal corporation which he represents to pay to the said contraytor Mr. Steinacher or to his legitimate representation the value of the public lights of this city at the rate of three dollars ($3) for each lamp that exists now or may be afterwards added in the city or district and places annexed according to the referred to conditions and that Mr. Steinacher has agreed to supply the public lights with kerosene when he takes possession of the buildings and gas works until the works will be in working order and in a satisfactory manner and binds the properties and rents of

the municipal corporation for the fulfilment for the municipal part as agreed with the contractor and makes renunciation of laws and rights in his favor. Agreed upon and signed both parties being present and the witness resident in the city, and without any legal obstacle, Mr. Hose Gran— Mr. Juan Manuel Aymerich. And to all presents which I the notary know, and read in a loud voice this document they having renounced the rights that they have to read it themselves, and the said witnesses signed after the contractors, to which I certify.

JOSE NADAL Y REY.
LUIS CASANAVE.

As witness
JOSE GRAN.

As witness—
JUAN MANUEL AYMERICH.

(Signed) ANTONIO M. DE ALDREY.

72 I the undersigned notary having the mortgage register of the district of this city certify having seen the books that two houses of brick built in the district of " la Marina " place called Puntilla one in the street of Isabella the 2nd marked with No. 12 continuous on the north with the gas works and on the south with the fortress of Santo Toribio on a government site composed of 227 square metres, and the other in the same street in a place where a garden was before bounded on the east with the said house No. 12 on the north Isabella the 2nd street and south and west by the gas works of the property which is said to be Mr. Julio Edmundo Steinacher and that they are not mortgaged in favor of any person or corporation.

Porto Rico 21st of August 1875
(Signed) PEDRO R. ESCALONA.

This first duplicate is well and faithfully done with the original *of* its contains, that is under No. 3— and in the date said at the commencement and was made before me the undersigned notary is true and legal correcting adjusted and with only one handwriting and to deliver it to Mr. Julio Edmundo Steinacher, at his petition.

I sign the present in twenty-three sheets of paper the first one of seal and engraved stamp and the others of stamp paper No. 3.

Porto Rico day, month and year of the act of the making of this instrument.

(Signed) ANTONIO M. ALDREY.

73 Office of mortgage.

By these presents that on this day and date I have recorded this document under the number 114 at page 60 of the 28th books of register under my charge, putting the note in the first copy that was presented to me.

Porto Rico 25th of August 1875.

PEDRO R. ESCALANO.

Notarial Certificate.

The undersigned notaries resident in the city of San Juan, Porto Rico, and in actual exercise certify and give testimony that Mr. Antonio M. de Aldrey by whom it appears that the copy of this document of contract and obligation made between Mr. Julio E. Steinacher and the excellent corporation of this city the day of 21st instant is as he calls himself at the commencement of this copy notary of the college of this Territory; and Mr. Pedro Rafael Escalona, by whom the note has been authorized dated 25th instant is also notary of the same college and has the office of recorder of mortgage of this city and its judicial district being the same as the other in free exercise of his duties. The signatures under their hand with which they have authorized this, are of their own handwriting, and are the signatures that they employ and are of entire faith and credit. And at the petition of the interested party we attested
74 and sealed it with the notarial college seal of this Territory.

Porto Rico 28th of August 1875.

(Signed) DEMETRIO GUNENEZ Y MORENO.
JUAN RAMON TORRES.

Seal No. 176.

75 Witness SCOTT continuing:

From time to time I collected from the city the accounts due the company for gas furnished, but the city did not pay me the entire amount due for lighting up to the 16th day of September, 1901; the amount remaining due to the Saint John's Gas Company is about $15,000.00; I do not remember the exact figures; the account attached to the company's declaration is correct at the date stated therein, that is, $14,600.60 on the 16th of September, 1901; to find the amount due on the 16th of September, 1900, you would simply deduct the interest; of this amount I, acting as the representative of the company, assigned a portion to Messrs. Mullenhorf & Korber of this city; the amount assigned was about $5,000.00; that amount has not been paid.

It is here admitted by counsel for the respective parties that the exact amount assigned to said firm of Mullenhorf & Korber, is $5,196.88.

Cross-examination.

By Mr. PETTINGILL:

I cannot give you the date at which my company became the assignee of this contract made between Mr. Steinacher and the city; as near as I can recollect it was about 1878—about two or
76 three years after the contract was made; I have been a shareholder in the company from the very beginning, and a director of it; I assumed the management of the company here

in San Juan about the end of the year 1890; since that time I have collected from the city all the moneys that the city has paid.

Q. They paid all that was due up to the date of your bill of particulars?

A. They never paid what was due; they always paid in Mexican money or pesos and under verbal protest from me.

Q. And you accepted that?

A. I could not get anything else.

Q. You are suing in this suit, if I understand your bill of particulars, for a claim beginning on the first day of November, 1899?

A. Yes.

Q. You are making no claim before that date, are you?

A. Yes, I am going to make a claim beyond that, but not in this suit.

Q. From the first day of November, 1899 up to the beginning of August, 1900, you received from the city, at various times, payments upon account, did you not?

A. Yes, small sums on account.

77 Q. I will ask you to state whether or not about the 22nd day of June, 1900, you had a settlement with the city as to the amount then due?

A. No, I never had any settlement whatever.

Q. I will show you this document, which is a part of the records of the city, and touching upon your contract relations with the city, and ask you whether or not that is your signature there? (Indicating in the document shown the witness, which is the same document hereinafter introduced in evidence by the defendant.)

A. Yes, that is my signature.

Q. State whether or not on or about the 22nd of June, 1900, you requested the City of San Juan to transfer to the credit of Mullenhorf & Korber the indebtedness at that time existing from the city to you?

A. Yes, to a certain amount—to $5,000.00.

Q. Did you, after that time, request the city to transfer any further amount to the credit of Mullenhorf & Korber?

A. $1,000.00 more afterwards.

Q. I believe you stated in your direct examination that something over $5,000.00 had been paid to Mullenhorf & Korber by the city.

A. Yes, it was more than $5,000.00; $5,130.00, or something like that.

78 Q. As to this amount, was the second assignment as much as $1,000.00?

A. I do not know how they managed to make the amount of Mullenhorf & Korber, but the order was for $1,000.00 for the month of July.

Q. Then, as I understand you, from the year 1900 you received and accepted payments from the city?

A. As in gold.

Q. (continued). In Portorican pesos because you could not get anything else?

A. I did not; I accepted in gold; all the payments were made in American gold.

Q. But the amounts were the amounts calculated in Portorican pesos?

A. That I do not know.

Q. Did I not understand you to testify to my previous question that you accepted the amount in pesos because you could not get anything more?

A. That was formerly; I was speaking of former years.

Q. How many years do you speak of?

A. From 1890 to the very last, up to the time of this suit.

Q. State whether or not at the time of this transfer to Mullenhorf & Korber a statement of account with your company was
79 submitted by the city to you?

A. I never received any statement whatever from the city at that time—not until long afterwards.

Q. At the time that you had a meeting with the representatives of the city and made the assignment to Mullenhoff & Korber, did you not go into the matter of the accounts between you and the city with the mayor?

A. But he did not produce any accounts or books; we came to this agreement that they were to pay Mullenhorf & Korber certain amounts of money; otherwise I could not keep on because there was no coal.

Q. Who was the mayor at that time?

A. Mr. Egozcue.

Q. Now read this document—(handing witness the same document above referred to)—and state whether you did not sign below it?

A. Yes, this is my signature here; I signed that writing but at the same time I made reclamations.

Q. What do you mean by reclamations?

A. Here it is in the document; here is the reclamation that I made.

Q. At the time you put your signature to this document, you had read this preceding action of the city council, had you not?
80 A. I do not know if I ever saw that, but I made the reclamation that is noted here.

Redirect examination.

By Mr. HORD:

Q. At the time that you filed this suit had the city paid Mullenhorf & Korber the fifty-one hundred and odd dollars?

A. No, not until twenty-one months after the assignment.

Q. Please state what was done and what was said between yourself and the representatives of the city and the representative of Mullenhorf & Korber in reference to this assignment?

A. The company owed Mullenhorf & Korber a larger amount than it could pay, even if the city had paid everything; I asked

the mayor to pay Mullenhorf & Korber on our account in order to enable us to collect the amount due by the city, saving all reclamations that I would make at the time. Mullenhorf & Korber did not receive the money; they held the order to receive it but did not receive it until twenty-one months afterwards, and then they got it without interest.

Q. In what kind of money did you receive the several payments made by the city?

A. In American money.

Q. Were these amounts in full of the amounts the city owed you?

81 A. Certainly not; very far from it.

And thereupon, the plaintiff, to further maintain the issues upon its part, produced as a witness one ANDRÉS CRÓSAS, who, after being duly sworn, testified as follows:

Direct-examination.

By Mr. HORD:

My name is Andrés Crósas; I live in Santurce—suburb of San Juan, and have a business establishment in San Juan; I was born in Porto Rico but was educated in the United States and lived there for thirteen years, after which I returned here in 1873; in 1875 and 1876 I was engaged in the shipping and commission business and had a large cooperage establishment and dealt in lumber and naval stores.

Q. Had you, or not, in the course of that business, occasion to know and be familiar with the different kinds of money current in Porto Rico?

A. For that matter I can give you the whole history from the time I left school about the currency in the island.

Q. But in the year 1875 what kind of foreign money was current in Porto Rico?

82 Mr. PETTINGILL: I object, because the question calls for evidence that is entirely immaterial; there is no evidence that payments were made at that time; the contract specifies that payments shall be made in current money, and whatever may have been current in 1875 can have no effect on payments to be made in 1899 and what was current then.

The COURT: Let the question be asked.

Mr. PETTINGILL: Please note an exception.

A. The foreign currency was American silver and American gold, and old Spanish gold, and some Mexican and Columbian gold. It was rated at different rates. For instance, the American gold, in order not to be driven from the island, was worth 5% premium, so that a double eagle instead of being worth $20.00 was passed at $21.00. The old Spanish doubloon was rated at 6¼% premium. The actual value being $16.00 it passed for $17.00. The Mexican,

Columbian, Venezuelian, Peruvian and Chilian doubloons which were worth $16.00 were worth here $16.50. Now, Spanish money (the Ysabelinas) were worth 5% premium.

The COURT: In that contract, where it speaks of foreign money, does it specify in the contract, what money?

Judge HORD: No sir, it specifies no foreign country, but it makes a distinction between the money of that foreign country—whatever it was, and Spanish money.

Q. Was that $21.00, represented by the value of the Ameri-
83 can double eagle, silver, or what kind of money?

A. American silver, because nearly all of the Spanish silver had been taken away from here.

Q. What was the most of the money in circulation here then?

A. American silver and American gold, and old Spanish gold doubloons.

Q. The American silver was at par?

A. Yes.

Q. What was the difference in price, if any, between the American gold and silver and the Spanish money at that time?

A. Well, at first, American silver was received at par, and was received in the customs house, but soon (in order for somebody to make something)—I mean the employés of the customs house,—they established a difference; in paying the dues you had to pay them in real Spanish coin, and as it would not suit to give Spanish gold, and you could not give Spanish silver, it was agreed between the treasurer and the merchants at large here in the island to receive dues in American silver, giving .526 per cent. premium on the Spanish silver, although you could not get the Spanish silver.

Cross-examination.

By Mr. PETTINGILL:

Q. How long did these mediums continue to be circulating
84 mediums?

Mr. HORD: I object to the question; there is no testimony relating to that, and whatever changes might have been made could affect this contract in no way; the contract could refer to nothing else than foreign money which was current here at the time the contract was made.

The COURT: I sustain the objection.

Mr. PETTINGILL: Please note an exception.

Q. What was the money current in this island in the year 1890?

Same objection and ruling of the court.

Mr. PETTINGILL: Please note an exception.

Q. What money was current in this island between the years 1890 and 1899?

Same objection and ruling of the court.
Mr. PETTINGILL: Please note an exception.
Plaintiff rests.

And thereupon, the defendant, to maintain the issues upon its part, produced as a witness, one MANUEL EGOZCUE, who, after being duly sworn, testified as follows:

85 Direct examination.

By Mr. PETTINGILL:

My name is Manuel Egozcue y Cintrón; I am mayor of the city of San Juan; I first became mayor when the first popular election took place under the military government; I think it was in 1900; since then I have been mayor all the time with the exception of four months when I was a member of the legislature; I have had dealings with Mr. L. A. Scott, as manager of the Saint John's Gas Company, which had a contract with the city council for the lighting; the treasurer of the city, by order of the mayor, made the payments to Mr. Scott on behalf of the city on that contract; the documents authorizing these payments carried the signature of the accountant and of the mayor; while the current provincial money was in existence these payments to the plaintiff company were made in that money, and from the conversion of the money into gold he was paid the amount in gold that was corresponding to it at the official rate established by the government; previous to the change of the money Mr. Scott received no other than provincial money at no time while I have been mayor; neither did Mr. Scott ever make any objection to the receipt of the provincial money.

Q. Do you recognize this document? (Handing witness document previously shown to the witness Scott.)

A. Yes, it was drawn before me.

86 Q. Tell the jury what it represents—the character of it?

A. This is a document agreed upon at the proposal of Mr. Scott.

Q. Were you present when Mr. Scott signed it?

A. I asked Mr. Scott to do it in writing; he came there with a verbal contract, and I said "No, put it in writing," and it was done so.

Said document was then offered in evidence and read to the jury, and was in the words and figures following, towit:

87 Municipal government of San Juan, offices of the ayuntamiento, secretary.

Number —.

I, Ramón Negrón Flores, secretary of the city council of the city of San Juan, hereby certify, that at the meeting held by the city council of San Juan on the eighteenth day of this month, the following resolution was passed:

20.—The president of the city council declared that Mr. Scott, the contractor of the public lighting for the city and Mr. Korber, a member of the firm Mullenhoff and Korber of this city had called on his office and stated that the amount of *seven thousand two hundred and twenty-eight pesos and eighty-seven cents*, Portorrican currency, total amount of the credit due to Mr. Scott, on account of his services as contractor from November of the year one thousand eight hundred ninety-nine, to last May, being deducted the amounts already collected by the said contractor, should be delivered to the above said firm, to the credit of which Mr. Scott wishes this amount to be passed.

The city council agreed with the declarations of the president, and passed the resolution considering the said balance of seven thousand two hundred and twenty-eight pesos with eighty cents, equivalent of *four thousand three hundred thirty-seven dollars and thirty-two cents* in favor of the firm Mullenhoff and Korber,
88 being therefore the municipal corporation relieved from any compromise with Mr. Scott concerning the said amount, without any prejudice to the resolutions to be passed sometimes in the future, about the claims previously filed by the said contractor.

And to begin the respective proceedings, I write and sign this declaration in San Juan of Puerto-Rico this twenty-second day of June of the year one thousand nine hundred.

(Signed) R. NEGRÓN.

On twenty-second June, being present Mr. Scott and Mr. Korber, the latter acting as representative of the firm of which he is a partner, I notified them the above resolution, and they affixed their signature as a proof of their acquiescence to the same, declaring at the same time, that the amount of the account of the month of June of this year, should be recognized as due to the same firm, to which the said amount must be paid. I certify it.

(Signed) R. NEGRÓN.
(Signed) MULLENHOFF & KORBER.
(Signed) L. A. SCOTT.

San Juan, June 19th, 1900.

Let it be done.
The Mayor, EGOZCUE.

89 Witness EGOZCUE continuing:

This document was signed in the secretary's office of the alcaldia, and there were present the secretary, myself and the parties who signed it; during the conversation Mr. Scott was discussing as to there being a larger quantity owing to his company, because he would not recognize the fines which, for want of proper lighting, had been imposed; and in the general liquidation fines had been put on his company in accordance with the stipulations of the con-

tract; a general account of the amounts owing to the company, together with the fines which had to be deducted, were shown to Mr. Scott at that time; this account was a written document; the amount shown therein of $7,228.87 (pesos) represented the current account with Mr. Scott's company as to lighting, and in the liquidation of this account Mr. Luis Ledesma, who was the officer in charge of the public lighting, took part; subsequently Mr. Scott spoke to me at various times about claims which he considered unjust regarding faults in lighting which he had committed, but they were faults which were frequently seen in the public service; Mr. Scott has not made of me any demand on the part of his company for the payment of the amounts specified in the contract in American gold, or its equivalent.

90 Cross-examination.

By Mr. HORD:

At the time of the conversation with Mr. Scott, about which I have testified, I showed him this same liquidation which I have testified about, which was in accordance with the books of the municipality, and in relation to the fines which had to be deducted; I am not sure whether it was six months or a year ago that this conversation occurred; I cannot even remember within a year of when it was.

Re-direct examination.

By Mr. PETTINGILL:

Q. On what occasion was it, if you cannot recollect the date?

A. This was when Mr. Korber and Mr. Scott came, and as Mr. Korber had pending accounts against Mr. Scott, he wanted these accounts granted by the municipality, and I told them there was no other way to do it but to make these transfers in agreement with both of them, and therefore it was necessary to make a liquidation of what was owing to him, and the document had to be drawn in accordance with the liquidation because the council had passed a resolution about it.

91 Re-cross examination.

By Mr. HORD:

Q. Did you say that after the change in money you reduced the amount into gold in making the payments to Mr. Scott?

A. In accordance with the official rate.

Q. Of sixty per cent.?

A. Yes.

Q. That was after the law providing that American money should be the standard?—Is that it?

A. Yes.

Q. Before that date you paid him the amounts in provincial coin?

A. Yes.

Q. And after that date you paid him in gold, or reduced it down to gold?

A. Yes.

Examination by the COURT:

Q. What is the meaning of the expression in this paper, "Without any prejudice to the resolutions to be passed sometime in the future about the claims previously filed by the said contractor?"

A. Those claims are for every fine that was put upon him; he used to send in a writing claiming against the mayor and the municipal council; it is probable that at this date he had some of
92 these claims established, and I did not want to prevent the right of the municipality to resolve upon his claims.

Q. They were claims for additional lights; do I understand?

A. They were claims for lights unlighted, and this was very frequently the case because he had very bad material in the service.

Q. This shows the claims filed by the contractor?

A. Yes.

Q. In this account sued on there are some credits,—$500.00 at one time, $600.00 at another time, $500.00 at another, $600.00 at another. What kind of money were they paid in?

A. I do not remember the dates, but if it was after the exchange it must have been in gold.

Q. When you paid the company $500.00, for instance, would you take a receipt for the $500.00, or for 40% more added to it, making $700.00?

A. The receipt was taken for the amount paid.

By Mr. PETTINGILL:

Q. Then before the gold was made standard, for an equivalent of $600.00 gold a thousand pesos was paid. For what amount would the receipt be given?

A. The receipt was given for the amount of provincial pesos that were paid.

93 Mr. PETTINGILL: We now offer in evidence the bill of particulars filed by the defendant in this case upon the motion of plaintiff.

Mr. HORD: We object to its introduction because it is not competent as evidence.

The COURT: I sustain the objection to the bill of particulars; it is only pleading in the case.

Mr. PETTINGILL: Please note our exception.

The said bill of particulars, so excluded, was in the words and figures following, towit:

94 Mr. Lucas A. Scott in account with the City of San Juan.

1899.			
Nov.	30.	Amount due to him for his bill on this date	$1,435.20
Dec.	31.	His bill for this month	1,440.00
(1900.)			
Jan.	31.	" " " " "	1,439.10
Feb.	28.	" " " " "	1,439.30
March	31.	" " " " "	1,437.00
Apr.	30.	" " " " "	1,435.20
May	31.	" " " " "	1,436.40
June	30.	" " " " "	1,432.60
July	31.	" " " " "	1,431.00
Aug.	31.	" " 10 days of this month	478.00
Aug.	31.	" " 21 " " "	1,005.40
Sept.	15.	" " 15 " " "	716.80
		Total amount P. R. c'y	15,126.00
		Dif. bet. P. R. c'y & U. S. c'y 40 %	6,050.40
		Total amount American money	$9,075.60

Paid.

1900.		P. R.	Gold.	
Jan. 31.	Paid on this month to him	833.33	500.00	
M'ch. 15.	" " " " " "	1,000.00	600.00	
April 9.	" " " " " "	1,000.00	600.00	
July 31.	Fine imposed against him, P. R. c'y	289.50	173.70	
Aug. 31.	Fine imposed against him, R. R. c'y	872.37	523.42	
Aug. 31.	Paid to him on this month	833.33	500.00	
	" to the insular treasury on his account:			
	Annuities 99–900	662.89		
	Lighting 99–900	58.75		
	Commission 7 %	4.41		
	Annuities 98–99	19.44		
	Commission 7 %	1.34		
	Lighting 99–900	65.72		
		812.57	2897.12	9,075.60
95	De la vuolta	812.57	2,897.12	9,075.60
	Annuities 1899–1900	17.28		
			829.85	
Sept. 15.	Fine imposed on this month		46.50	
	Balance due to him		5,302.13	
			9,075.60	9,075.60

Note—This balance was endorsed to the firm Mullenhoff & Korber as follows:

Under the resolution of June 18th, 1900 (enclosed)	4,337.32
Under the resolution of Nov. 12th, 1900 (enclosed)	964.81
Total amount	5,302.13

San Juan, P. R., 1st March, 1902.

96 And thereupon, the defendant, to further maintain the issues upon its part, produced as a witness one LUIS LEDESMA Y SALDAÑA, who, after being duly sworn, testified as follows:

My name is Luis Ledesma y Saldaña, and I am an employé in the department of public works under the municipality; I have been in such employment for eight or ten years, and was at work in my office during the month of June, 1900; I know Mr. L. A. Scott and Mr. Korber of Mullenhorf & Korber; I remember an occasion during the month of June, 1900, when I was present at a meeting between them and the mayor in the alcaldia in which Mr. Scott's business with the city was discussed; a liquidation of the account the municipality had was presented to Mr. Scott for what was owing to his company on account of the lighting, to which liquidation Mr. Scott agreed, and the secretary made a minute which was signed by the secretary and Mr. Scott and by Mr. Korber; the liquidation of the account was presented to Mr. Scott, and he saw it and signed it; I was not near enough to hear just what was said; I was occupied with my work and could not take in what was being said.

The defendant rests.

97 And thereupon, in rebuttal of the testimony on behalf of said defendant the plaintiff again produced as a witness WILLIAM KORBER, who was recalled and testified as follows:

Examined by Mr. HORD:

I have seen this document before. (Witness referring to the document heretofore introduced by defendant.) I was present when it was executed; that is my signature; during the conversation at that time, the mayor, Mr. Egozcue, and his secretary, were present, as well as Mr. Scott and myself. Mr. Scott had agreed to transfer the indebtedness of the city to the gas company to Mullenhorf & Korber; we explained that to the mayor and he said it was all right, and then this instrument was drawn up. Mr. Scott and myself went to the mayor and told him we had agreed upon a transfer of this five thousand dollars more or less, and the mayor agreed to it and a document was made up. The money was to be paid to Mullenhorf & Korber and not to Mr. Scott; Mr. Scott and I had agreed that that amount due by the city to him was to be transferred to my firm, but Mr. Scott did not at that time agree with Mr. Egozcue that the account as stated by the city of the amount due him was correct.

Cross examination.

By Mr. PETTINGILL:

98 I did not make up the account and do not know how the amount mentioned in the transfer was fixed or how it happened to be seven thousand two hundred and odd pesos and

so many centavos; that amount was not agreed upon between Mr. Scott and the mayor as the exact — due from the city at that time; when this contract was made out no special amount was stated; Mr. Scott did not promise me exactly $5,000.00; when I went up to the mayor's office Mr. Scott and Mr. Egozcue were all present; I do not know what occurred between them previous to my going there.

Re-direct examination.

By Mr. HORD:

Mr. Scott and I went up to the mayor's office together and I was there all the time that Mr. Scott was.

Re-cross examination.

By Mr. PETTINGILL:

I am not able to explain how that amount which was paid to my firm was fixed; I think at that time Mr. Scott's company owed me more than this amount, but I could not state positively.

And thereupon, in further rebuttal of the testimony on be-
99 half of said defendant the plaintiff again produced as a witness L. A. SCOTT, who was recalled and testified as follows:

Examination by Mr. HORD:

That is my signature (referring to document shown to previous witness). Mr. Korber and the old secretary—and possibly the mayor, (but I am not sure about him), were present when that instrument was signed; the old secretary was a very old man; I do not know his name, but it was neither of these men who have come here; I do not recollect seeing either of these men there unless they carried in a book; there was no conversation at that time leading up to the execution of this instrument; the arrangement was that they were to pay Mr. Korber all they could pay to the end of June, and afterwards reclamations to be made by me if the accounts were not correct; they did not present the account that day; they simply stated that they could pay so much but they did not pay it; that amount was the amount marked there in the document—$7,228.00 (pesos) 80 centavos; the clause in that document which says, "Without any prejudice to the resolutions to be passed sometime in the future about the claims," etc., refers to my reclamations as to the account between the city and the company without reference to Mullenhorf & Korber; the other account was to be regulated afterwards; these claims or reclamations which I was to make re-
100 ferred to the monthly accounts for gas lights; the claims were for arbitrary fines by the city.

Examination by the COURT:

The gas plant was seized on the 16th of September, 1900; the item in the bill of particulars of $115.60 for lime, coke, coal etc., was not included in the suit previously tried.

It is, at this point, admitted by counsel for plaintiff that this item of $115.60 should not be claimed from the jury.

Re-direct examination:

As the city never supplied any statement of accounts to me I could not state that I was satisfied with them; this document was simply an agreement to pay Mr. Korber so much money, subject to my reclamations thereafter.

Thereupon, the plaintiff, having completed its rebuttal, again rested its case, and the defendant, not desiring to offer further testimony, also rested its case.

And the foregoing evidence constituted all the evidence given in said cause.

And the said parties having concluded and submitted their testimony in the several matters aforesaid, and having, by their
101 respective counsel, submitted arguments to the jury, the said judge, before said jury retired to consider of their verdict, did then and there, of his own motion, charge and instruct the jury as follows:

102 GENTLEMEN OF THE JURY: This is an action known in law as an "action on the case." More plainly stated, it is an action upon an account containing different items, being mostly for public lighting of the city of San Juan from November 1st, 1899 to September 15th or 16th, 1900. It is claimed by the plaintiff that the pay for this lighting was due at the end of each month, and in his account you will see he has added interest in the account, and in some places it is counted at 12 %. That amount is not allowable on an open account. It will be your duty, in the first place, if you find anything is owing to the plaintiff, to take this account and ascertain from it what is owing; and first, I say to you, that it is conceded in open court that the item of $115.50 for lime, coal, coke and gas seized by the city is not recoverable in this case; that is admitted by the plaintiff, so that passes out of your consideration. There are various credits in this account, which, of course, you are to deduct from whatever you may find is owing to it, if anything. If you find for the plaintiff you would find whatever is owing upon that account, deducting the credits made by the plaintiff on the account. From that account, as is also conceded, there is to
103 be deducted the sum of $5,198.88, which was the amount transferred to the firm of Muellenhorf & Korber. It is conceded that this amount be deducted from the claim, provided, of course you find anything for the plaintiff.

Now, the question arises: How are you to reach a conclusion and determine whether there is anything owing upon that claim. And the main question in the case, if you find there is anything owing, in what character of money you are to estimate it. It appears from the testimony that in the year 1875 the city owed a gas works. Under that contract, which is in evidence, and which I think, after the charge of the court, you will not need to examine much, although you have the right to do so; under that contract these gas works were sold to Mr. Steinacher, and in that he entered into a contract with the city by which he was to furnish lights to the city. That contract, in 1878, if I recollect correctly, was transferred to the plaintiff, The Saint John's Gas Company. It was provided before the making of that contract that bids were had by the city in Europe, in the United States and some other countries. Finally this contract was entered into for the term of twenty-five years. In the proposal which was made by Mr. Steinacher it was stated that, so far as the lighting was concerned, he would do it for $3.00 per lamp monthly in currency. Now, currency means what was pass-
104 ing as money in the country; what was current as money in the country. That is the general meaning of it. It is stated in the contract in one place that payment was to be made to the contractor in circulating foreign money in commerce. In another place it is stated that if kerosene lamps were to be furnished, as they were in certain events, that the pay for that would be $3.00 in current money monthly for each lamp. The gas works were sold, as the contract shows, for a certain sum of money, thirty thousand dollars, payable in foreign commercial money. I find in that proposal and in the contract, that lighting shall be had for $3.00 monthly in currency for each lamp. I find it stated that payments were to be made in circulating foreign money in commerce. Now, that certainly did not mean the foreign money of any country, no matter whether circulating here or not. It did not mean French fran-s, or money that was not circulating here.

So far as the construction of that contract is concerned, you must accept the law as given you by the court. You have no right to construct the contract yourselves and determine what it means—that is a matter for the court to do. If the parties specifically contracted for a certain kind of money then the contract is payable in that kind of money. Parties must be considered as contracting with reference to the existing law where the contract is made, or the state of affairs existing by the then existing law. The fact
105 that the law may be changed so as to make the performance of the contract more burdensome or expensive does not change or discharge the contract. The payment must be made according to it. I tell you, as a matter of law, that under that contract the payment for lighting was to be made in the money that was then current and in circulation in the island of Porto Rico. That was what was meant by "current foreign money," when the term was used in that contract. That was what was meant by the term "current money" in that contract, or even by the

term "currency" in that contract. It was the money that was circulating as money and as the medium of exchange in Porto Rico at that time. The parties could not have foreseen for instance, or it is not possible that they would have foreseen, the change of government, or that Porto Rico, for instance, might in the future have belonged to France which may not have had, for instance, a medium of exchange worth more than ten cents in proportion of the money then circulating on the island. If that could be so, then the city of San Juan would have obtained these lights at ten cents each, which, of course, would be very unreasonable.

The parties making that contract took into consideration the value of money in the island at that time, and the money that was then circulating in the island. You are to determine what that
106 was from the testimony. If I recollect correctly, it was shown in evidence that the money then circulating in the island of Porto Rico was Spanish gold, American gold, Venezuelian Mexican, Columbian Peruvian and Chilian gold, and, I believe, American silver. There is no showing, as far as I recollect, that pesos, as they are termed, or Porto Rican money, was circulating in Porto Rico then. This contract evidently did not mean that the payment was to be made in Spanish gold, because by one of the paragraphs in the contract it was excluded. Therefore, I say to you that under this contract these payments for these lights were to be made in American gold or silver, or in Spanish, Mexican, Columbian, Peruvian, Chilian and Venezuelian gold.

Now the party could discharge it in any one of these mediums of exchange, and the testimony is before you as to what that money was worth.

That being the meaning in law of this contract, it is contended by the defendant that the parties changed that contract, not by any written agreement, nor by any verbal agreement, but by a continued course of action—by conduct upon the part of the two parties which should satisfy you that their minds met and that they understood or agreed that this contract, from that time on, was payable in Porto Rican currency, or pesos. In other words, it is claimed that that written contract was changed by such verbal agreements, or
107 different course of action—of mutual conduct, and I say to you that if the one had paid and the other without objection, had accepted through a course of years money of a certain kind and meant as payment of what was owing on this contract from time to time, then you may find that the parties had changed the kind of money with which the contract might be discharged, and if this was in Porto Rican pesos, then the plaintiff would be only entitled to recover in American dollars at the rate of sixty cents on the American dollar, whatever amount you may believe from the evidence he is entitled to recover in Porto Rican currency. That is, if their minds met upon this subject. A contract is a meeting of minds itself—an agreement. If their minds met and the money was paid by the one and received by the other without any protest, then that would have made a change in the kind of money the

contract was to be discharged in. If the City of San Juan owed the plaintiff a certain amount for lighting and the City of San Juan offered to pay so much money, and, at the same time said to the debtor, "I dispute your claim; this is all that I will pay on it, and you must accept this or have nothing," and then the debtor accepted it, it would be a settlement; but if the City of San Juan merely paid a certain amount to the debtor and the debtor protested at the time that it was not as much as he was entitled to, that would reserve his rights in the matter and he would be entitled to receive
108 and credit that amount on the claim and then sue for the balance of it afterwards.

It is also claimed that at the time of the payment, or of the assignment—at one time or the other, I forget which, from the evidence, but I believe from the time of the payment—that when this amount of $5196.88 was transferred to Mullenhorf & Korber, either at the time of the transfer, or at the time of the payment, I do not recollect distinctly which, but you will remember that—it is claimed that it was agreed between the parties that that was all that was owing at that time which was, as I recollect it, in June, 1900. If you believe from the testimony that that much was transferred to Mullenhorf & Korber in June 1900, and that it was understood and agreed by the parties at that time that that was all that was owing up to that time, why then, that cuts off any claim by the Saint John's Gas Company up to that period of time, and any item of this account sued on prior to that time in June would be cut off by that settlement, if there was such a settlement. If you believe from the evidence that there was merely that much transferred to these parties, the plaintiff had the right of course to transfer his claim or any part of it, to a third party, and it was merely a transfer of a part of the claim it does not cut off his right to claim anything prior to the month of June. So far as any claim on the part of the defendant for fines and delinquencies in complying with this
109 contract, there is no testimony in reference to them and you can find nothing on that account.

I will repeat a little in order that you may understand me: The construction required to be given to that contract as to the money in which it was to be discharged is that it was the money in circulation in the island of Porto Rico at that time—the money then current in the island of Porto Rico. You are to arrive at the value of this lighting according to that currency which was then in circulation; unless, as I have stated to you, you find that by the conduct of the parties, or by their verbal agreement, their fixed conduct afterwards for a course of time and which showed what they understood the contract to be, and which showed what their contract was—unless you find from the evidence that payments were made for this lighting in different characters of money, that the payments were made and received, thereby showing by this course of conduct that the parties interested changed the contract. I think there can be no doubt as to the construction of the original contract, and therefore I say to you, what I have already said as to the meaning of it.

If this contract, for instance, had been made before the Revolutionary war in the United States and there was continuously money issued which finally became worthless, it was stated if you recollect that the old lady took her money to market in a basket and
110 brought home her potatoes in her pocket. If that kind of money had come by the change of government in Porto Rico it could certainly not be construed that this contract could be discharged in that money. The parties making this contract agreeing to the money in circulation at that time, unless then there was this change of contract by conduct or agreement between the parties you would fix the value of whatever lights were furnished according to that original contract, the meaning of which the court has already defined to you. Of course, you take into consideration also if there was a settlement in June 1900—a settlement by which the parties agreed upon a certain amount—that would cut off any claim up to that period. You deduct from this account the interest which I have said is improperly accounted. You deduct the item of $115.50, for which there can be no recovery in this case. You ascertain the balance, after taking out also the $5196. that was transferred, and deducting the credits given in the account by the plaintiff, you find the balance and upon that balance you may, or not, give interest from the time when it fell due or any instalment of it fell due. That is a matter in your discretion. In you- verdict, if you find for the plaintiff, it would be: "We, the jury, find for the plain-
111 tiff (so much) in damages." If you find for the defendant, you would say: "We, the jury, find for the defendant."

And upon the conclusion of the foregoing charge, and before the jury retired from the bar, the defendant, by it- attorneys, did then and there except to the following paragraph of said charge: towit: "It is stated in the contract in one place that payment was to be made to the contractor in circulating foreign money in commerce; in another place it is stated that if kerosene lamps were to be furnished, as they were in certain events, that the pay for that would be $3.00 in current money monthly for each lamp. The gas works were sold, as the contract shows, for a certain sum of money—thirty thousand dollars—payable in foreign commercial money. I find in that proposal and in the contract, that lighting shall be had for $3.00 monthly in currency for each lamp. I find it stated that payments were to be made in circulating foreign money in commerce."

And the said defendant, by its attorneys, before the jury retired from the bar, further excepted to the following paragraph of said charge:

112 "I tell you, as a matter of law, that under that contract the payment for lighting was to be made in the money that was then current and in circulation in the island of Porto Rico; that was what was meant by 'current foreign money' when the term was used in that contract; that was what was meant by the term 'current money' in that contract, or even by the term 'currency' in that contract."

And the said defendant, by its attorneys, before the jury retired from the bar, further excepted to the following paragraph of said charge:

"Therefore, I say to you that under this contract these payments for these lights were to be made in American gold or silver, or in Spanish, Mexican, Columbian, Peruvian, Chilian and Venezuelian gold. Now the party could discharge it in any one of these mediums of exchange, and the testimony is before you as to what that money was worth."

And the said defendant, by its attorneys, before the jury retired from the bar, further excepted to the following paragraph of said charge:

"If their minds met and the money was paid by the one and received by the other without any protest then that would have
113 made a change in the kind of money the contract was to be discharge- in. If the City of San Juan owed the plaintiff a certain amount for lighting and the City of San Juan offered to pay so much money and at the same time said to the debtor, 'I dispute your claim; that is all that I will pay on it, and you must accept this in satisfaction or have nothing,' and then the debtor accepted it, it would be a settlement; but if the City of San Juan merely paid a certain amount to the debtor and the debtor protested at the time that it was not as much as he was entitled to, that would reserve his rights in the matter, and he would be entitled to receive and credit that amount on the claim and then sue for the balance of it afterwards."

And the said defendant, by its attorneys, before the jury retired from the bar, further excepted to the following paragraph of said charge:

"So far as any claim on the part of the defendant for fines and delinquincies in complying with this contract, there is no testimony in reference to them, and you can find nothing on that account."

114 And the said defendant did then and there, by its attorneys, before the jury retired from the bar of the court, pray the judge to instruct the jury as follows:

"If you find from the evidence that the defendant was bound to pay the plaintiff for its services in 'current money,' which phrase is the equivalent of 'money in current circulation'—and I charge you that the contract so provides, and does not provide for payment in any kind of foreign money—and you further find that through a series of years payment was made under the contract by defendant and accepted by the plaintiff in money of a certain kind and value, then such payment and acceptance is cogent evidence of what was meant by the phrase 'current money' as used in the contract between the parties."

But the said judge did then and there deliver his opinion and decide that said prayer should not be granted, and did then and there refuse to instruct the said jury as requested; to which decision and refusal of said judge, the said defendant, by its attorneys, did then and there except.

And the said defendant did then and there, by its attorneys, before the jury retired from the bar of the court, pray the judge to instruct the jury as follows:

"But although a written contract exists between the par-
115 ties, these same parties may by subsequent verbal agreement or by a well defined subsequent course of action under the contract change the terms of that contract; and if you believe from the evidence that the plaintiff through a series of years received and accepted from the defendant payment for its services in money of a certain kind and to a certain amount as such payments became due from time to time, then you are warranted in finding that the parties by such course of action had changed the provisions for payment originally made, even though such provisions had called for money of a different kind or to a different amount."

But the said judge did then and there deliver his opinion and decide that said prayer should not be granted, and did then and there refuse to instruct the said jury as requested; to which decision and refusal of said judge, the said defendant, by its attorneys, did then and there except.

And the said defendant did then and there, by its attorneys, before said jury retired from the bar of the court, pray the judge to instruct the jury as follows:

"If you find that the plaintiff through a series of years continued to receive payment from the defendant for its services in Portorican currency to the amount called for by the contract, knowing
116 that the defendant made such payments as and for a full discharge of its obligations under said contract, then the plaintiff by the acceptance of such payments with that understanding is estopped to claim that payment should have been made in any other medium or to any larger amount."

But the said judge did then and there deliver his opinion and decide that said prayer should not be granted, and did then and there refuse to instruct the said jury as requested; to which decision and refusal of the said judge, the said defendant, by its attorneys, did then and there except.

And the said defendant did then and there, by its attorneys, before the jury retired from the bar of the court, pray the judge to instruct the jury as follows:

"If you believe from the evidence that at the time of the assignment admitted to have been made to the firm of Mullenhorf & Korber the amount then due from the defendant to the plaintiff was compromised and fixed, then the plaintiff is bound by that compromise; and, the amount then agreed upon having been subsequently paid, the plaintiff can make no claim for any services rendered before the end of the period covered by that compromise."

But the said judge did then and there deliver his opinion and decide that said prayer should not be granted, and did then
117 and there refuse to instruct the said jury as requested; to which decision and refusal of the said judge, the said defendant, by its attorneys, did then and there except.

And the said defendant did then and there, by its attorneys, before the jury retired from the bar of the court, pray the judge to instruct the jury as follows:

"As a matter of law the meaning of the phrase 'current money' as used in the written contract introduced in evidence is that money which was in ordinary circulation in this community at the time any payment became due under the contract, and is not confined to the money which was current at the time the contract was made."

But the said judge did then and there deliver his opinion and decide that said prayer should not be granted, and did then and there refuse to instruct the said jury as requested; to which decision and refusal of the said judge, the said defendant, by its attorneys, did then and there except.

And the said defendant did then and there, by its attorneys, before the jury retired from the bar of the court, pray the judge to instruct the jury as follows:

"If you find from the evidence that on the 20th day of January, 1899, the obligation from the defendant to the plaintiff, either
118 by the written terms of the contract or by the practical construction put upon it by the parties subsequently to its making, was dischargeable in the currency of Porto Rico, then I charge you as matter of law that the plaintiff is entitled to recover only sixty cents in American gold for each dollar of Portorican currency which it would have been entitled to receive if no change of money had been made."

But the said judge did then and there deliver his opinion and decide that said prayer should not be granted, and did then and there refuse to instruct the said jury as requested; to which decision and refusal of the said judge, the said defendant, by its attorneys, did then and there except."

119 And forasmuch as the matters above set forth do not fully appear of record the defendant tenders this its bill of exceptions and prays that the same may be signed by the judge of this court pursuant to law; which is done accordingly this 24th day of February, 1903.

WM. H. HOLT, *Judge.*

120 In the United States District Court for Porto Rico, October Term, A. D. 1902.

SAINT JOHN'S GAS COMPANY, LTD., *vs.* CITY OF SAN JUAN. } Assignment of Errors.

Filed March 30, 1903.

Comes the defendant in the above entitled cause, by its attorneys N. B. K. Pettingill & J. M. Keedy, and assigns the following as ther errors committed by the court aforesaid in the course of the trial and proceedings in said cause:

I.

The court erred in allowing one Andres Crosas, a witness for the plaintiff, in answer to the question "But in the year 1875 what kind of foreign money was current in Porto Rico?" to testify as to the different kinds of money in circulation at the time indicated and the value thereof, against the objection and exception of the defendant.

II.

The court erred in sustaining the objection of plaintiff to the following question asked of said witness Andres Crosas by defendant on the cross-examination of said witness, to wit: "How long did these mediums continue to be circulating mediums?" and in refusing to allow said witness to answer said question.

III.

The court erred in sustaining the objection of plaintiff to the following questions asked of said witness Andres Crosas by defendant on the cross-examination of said witness, to wit: "What was the money current in this island in the year 1890?" And "What money was current in this island between the years 1890 and 1899?" And in refusing to allow said witness to answer said questions.

121 IV.

The court erred in sustaining the objection of plaintiff to the introduction in evidence of, and excluding from the consideration of the jury, the bill of particulars produced and filed in said cause by the defendant upon the motion of the plaintiff and offered in evidence by the defendant at the trial of said cause.

V.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"It is stated in the contract in one place that payment was to be made to the contractor in circulating foreign money in commerce; in another place it is stated that if kerosene lamps were to be furnished, as they were in certain events, that the pay for that would be $3.00 in current money monthly for each lamp. The gas works were sold, as the contract shows, for a certain sum of money—thirty thousand dollars—payable in foreign commercial money. I find in that proposal and in the contract that lighting shall be had for $3.00 monthly in currency for each lamp. I find it stated that payments were to be made in circulating foreign money in commerce."

VI.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"I tell you as a matter of law that under that contract the pay-

ment for lighting was to be made in the money that was then current and in circulation in the island of Porto Rico; that was what was meant by 'current foreign money' when the term was used in that contract; that was what was meant by the term 'current money' in that contract, or even by the term 'currency' in that contract."

VII.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"Therefore I say to you that under this contract these payments for these lights were to be made in American gold or silver, or in Spanish, Mexican, Columbian, Peruvian Chilian and Venezuelian gold. Now the party could discharge it in any one of these mediums of exchange, and the testimony is before you as to what that money was worth."

122 VIII.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"If their minds met and the money was paid by the one and received by the other without any protest, then that would have made a change in the kind of money the contract was to be discharged in. If the City of San Juan owed the plaintiff a certain amount for lighting and the City of San Juan offered to pay so much money and at the same time said to the debtor 'I dispute your claim; that is all that I will pay for it, and you must accept this in satisfaction or have nothing,' and then the debtor accepted it, it would be a settlement; but if the City of San Juan merely paid a certain amount to the debtor and the debtor protested at the time that it was not as much as he was entitled to, that would reserve his rights in the matter, and he would be entitled to receive and credit that amount on the claim and then sue for the balance of it afterwards."

IX.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"So far as any claim on the part of the defendant for fines and delinquincies in complying with this contract, there is no testimony in reference to them, and you can find nothing on that account."

X.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you find from the evidence that the defendant was bound to pay the plaintiff for its services in 'current money,' which phrase is the equivalent of 'money in current circulation'—and I charge you that the contract so provides, and does not provide for payment in any kind of foreign money—and you further find that through a

series of years payment was made under the contract by defendant and accepted by the plaintiff in money of a certain kind and value, then such payment and acceptance is cogent evidence of what was meant by the phrase 'current money' as used in the contract between the parties."

XI.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"But although a written contract exists between the parties, these same parties may by subsequent verbal agreement or by a well defined subsequent course of action under the contract change the terms of that contract; and if you believe from the evidence
123 that the plaintiff through a series of years received and accepted from the defendant payment for its services in money of a certain kind and to a certain amount as such payments became due from time to time, then you are warranted in finding that the parties by such course of action had changed the provisions for payment originally made, even though such provisions had called for money of a different kind or to a different amount."

XII.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you find that the plaintiff through a series of years continued to receive payment from the defendant for its services in Portorican currency to the amount called for by the contract, knowing that the defendant made such payments as and for a full discharge of its obligations under said contract, then the plaintiff by the acceptance of such payments with that understanding is estopped to claim that payment should have been made in any other medium or to any larger amount."

XIII.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you believe from the evidence that at the time of the assignment admitted to have been made to the firm of Müllenhoff & Körber the amount then due from the defendant to the plaintiff was compromised and fixed, then the plaintiff is bound by that compromise; and, the amount then agreed upon having been subsequently paid, the plaintiff can make no claim for any services rendered before the end of the period covered by that compromise."

XIV.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"As a matter of law the meaning of the phrase 'current money' as used in the written contract introduced in evidence is that money

which was in ordinary circulation in this community at the time any payment became due under the contract, and is not confined to the money which was current at the time the contract was made."

the money which was current at the time the contract was made."

XV.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you find from the evidence that on the 20th day of January, 1899, the obligation from the defendant to the plaintiff, either by the written terms of the contractor — by the practical construction put upon it by the parties subsequently to its making, was dis-
124 charg-able in the currency of Porto Rico, then I charge you as matter of law that the plaintiff is entitled to recover only sixty cents in American gold for each dollar of Portorican currency which it would have been entitled to receive if no change of money had been made."

Wherefore the said City of San Juan, plaintiff in error, prays the honorable, the Supreme Court of the United States, to examine and correct the errors assigned, and for a reversal of the judgment of the district court of the United States for Porto Rico entered in the above entitled cause.

N. B. K. PETTINGILL,
J. M. KEEDY,
Attorneys for Defendant and Plaintiff in Error.

125 In the District Court of the United States for Porto Rico.

ST. JOHNS GAS CO., LTD.,
vs.
THE CITY OF SAN JUAN.

I, Ricardo Nadal, clerk of the district court of the United States for the district of Porto Rico, do hereby certify *that* the foregoing one hundred twenty-four typewritten pages, numbered from one to 124, inclusive, to be a full true, and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $38.30 and that the same amou-t was paid by N. B. K. Pettingill & J. M. Keedy, attorneys for plaintiffs in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, this sixth day of April A. D. nineteen hundred and three.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk of Said Court,
By H. H. SCOVILLE,
Deputy Clerk.

126 *Writ of Error.*
126 *Writ of Error.*

Certified copy filed Dec. 20, 1902.

UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

The President of the United States to the honorable the judge of the United States district court for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment for $8,761.35, of a plea which is in the said United States district court for Porto Rico, before you, between St. John's Gas Company, Limited, a corporation existing under the laws of the Kingdom of Gt. Britain and Ireland, plaintiff, and The City of San Juan, a municipal corporation organized and existing under the laws of Porto Rico, defendant, manifest error hath happened, to the great damage of the said defendant, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26" day of November in the year of our Lord one thousand nine hundred and two.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk U. S. District Court, District of Porto Rico,
By FRANK ANTONSANTI, *D. C.*

Allowed this 26th, day of Nov. 1902.

WM. H. HOLT, *Judge.*

[Endorsed:] U. S. district ct. for P. R. Com. L. No. 79. St. John's Gas Co., Ltd., *vs.* City of San Juan. Writ of error. Filed clerk's office, United States district court. ——, 1—. —— ——, clerk of the court.

126½ **Form No. 282.**

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Porto Rico,* } ss:

I hereby certify and return that I served the annexed writ of citation on the therein-named The Saint Johns Gas Company by handing to and leaving a true and correct copy thereof with F. H. Dexter, attorney of record for the Saint Johns Gas Company personally at San Juan, P. R. in said district on the 24th day of December, A. D. 1902.

E. S. WILSON,
U. S. Marshal,
By H. S. HUBBARD, *Deputy.*

127 UNITED STATES OF AMERICA, ss: #170.

To the Saint John's Gas Company, Limited, a corporation organized under and by virtue of the laws of England, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from date hereof, pursuant to a writ of error filed in the clerk's office of the United States district court for Porto Rico, wherein The City of San Juan, a municipal public corporation, organized and existing under the laws of Porto Rico, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of November, A. D. 1902, and in the one hundred and twenty-seventh year of the Independence of the United States of America.

WM. H. HOLT,
Judge U. S. District Court for Porto Rico.

[Endorsed:] U. S. district ct. for P. R. St. John's Gas Co., Ltd., *vs.* City of San Juan. Writ of citation. Com. L. No. 79. Marshal's fees, 1 service, $2.00 Expenses, ——.

128 [Endorsed:] No. —. In the district court of the United States for Porto Rico. —— term, 190–. The Saint John's Gas Company, Limited, *versus* The City of San Juan. Transcript of record on writ of error from Supreme Court of U. S.

Endorsed on cover: File No. 18,939. Porto Rico D. C. U. S. Term No. 288. The City of San Juan, plaintiff in error, *vs.* The Saint John's Gas Company, Limited. Filed May 19th, 1903.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

No. ~~388~~ 41.

THE CITY OF SAN JUAN, PLAINTIFF IN ERROR,

vs.

ST. JOHN'S GAS COMPANY, LTD., DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR PLAINTIFF IN ERROR.

N. B. K. PETTINGILL,
Attorney for Plaintiff in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10772

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

No. 288.

THE CITY OF SAN JUAN, PLAINTIFF IN ERROR,

vs.

ST. JOHN'S GAS COMPANY, LTD., DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

STATEMENT OF FACTS.

On August 21, 1875, a written contract was entered into between the plaintiff in error and one Julio E. Steinacher, whereby the city sold to Mr. Steinacher its then existing gas plant and agreed to purchase gas light from the latter or his assigns for the term of 25 years from the date service under the contract was begun; and Mr. Steinacher on his part agreed to improve the plant so as to furnish a specified quality of light, etc. About three years after entering into the performance of this contract, Steinacher assigned his interest therein to defendant in error, which continued the performance of the contract until practically the end of the contract period.

The notarial instrument, in which this simple contract may be said to be buried, contains, as is customary in all Spanish documents, a recital of all negotiations leading up to the final agreement—in fact its entire history from its incipiency; and the translation of it—and a very imperfect and ungrammatical one—fills the printed record from page 12 to page 39; but the only portion material to the questions raised on this writ of error refers to the question of the kind of money in which payments were to be made.

The contract expired by limitation of time on September 15, 1900. This suit was begun in October, 1901, to recover the sum of $14,600.60, claimed to be due defendant in error for furnishing lights under said contract between November, 1899, and said September 15, 1900, payment in gold being demanded at the same price mentioned in the contract, less some payments on account. (See bill of particulars, Record, pp. 2 and 3.)

The declaration consisted of the common counts and a count upon an account stated. A demurrer to this latter was sustained, which by mistake does not appear of record; but as defendant's pleas go only to the common counts, and issue was joined and trial had thereon without objection, plaintiff would in any event be considered to have abandoned or waived its special count. So we arrive at the same result as though the record was correct, to wit, that the common counts and the pleas thereto formed the issue upon which the case was tried and the judgment entered.

The defendant (plaintiff in error) filed four pleas: *non assumpsit*, *nil debet*, payment to a third party by assignment from plaintiff as to the sum of $5,196.88, and set-off to an amount equal to the claim for penalties assessed against the plaintiff for non-burning of lights (Record, pp. 3 and 5, bottom), and issue was joined thereon.

Upon these issues trial was had on November 5 and 6, 1902, which resulted in a verdict for plaintiff for $8,761.35.

From the judgment upon that verdict defendant below sued out this writ of error.

The evidence on behalf of plaintiff consisted of the contract, the testimony of L. A. Scott, manager of plaintiff company, as to the course of dealing between the company and the city, and of one Andres Crosas as to the kinds of money in circulation in Porto Rico in the year 1875. The evidence for defendant consisted of the testimony of the mayor and other city employés as to the course of dealing between the parties and as to a settlement made on June 22, 1900, of all claims up to that time, of which also written evidence was offered.

The errors assigned for the consideration of this court cover fifteen points, as follows (Record, pp. 59–62):

I.

The court erred in allowing one Andres Crosas, a witness for the plaintiff, in answer to the question, "But in the year 1875 what kind of foreign money was current in Porto Rico?" to testify as to the different kinds of money in circulation at the time indicated and the value thereof, against the objection and exception of the defendant.

II.

The court erred in sustaining the objection of plaintiff to the following question asked of said witness, Andres Crosas, by defendant on the cross-examination of said witness, to wit: "How long did these mediums continue to be circulating mediums?" and in refusing to allow said witness to answer said question.

III.

The court erred in sustaining the objection of plaintiff to the following questions asked of said witness, Andres Crosas, by defendant on the cross-examination of said witness, to wit, "What was the money current in this island in the year 1890?" and "What money was current in this island

between the years 1890 and 1899?" and in refusing to allow said witness to answer said questions.

IV.

The court erred in sustaining the objection of plaintiff to the introduction in evidence of and excluding from the consideration of the jury the bill of particulars produced and filed in said cause by the defendant upon the motion of the plaintiff and offered in evidence by the defendant at the trial of said cause.

V.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"It is stated in the contract in one place that payment was to be made to the contractor in circulating foreign money in commerce; in another place it is stated that if kerosene lamps were to be furnished, as they were in certain events, that the pay for that would be $3.00 in current money monthly for each lamp. The gas works were sold, as the contract shows, for a certain sum of money—thirty thousand dollars—payable in foreign commercial money. I find in that proposal and in the contract that lighting shall be had for $3.00 monthly for each lamp. I find it stated that payments were to be made in circulating foreign money in commerce."

VI.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"I tell you as a matter of law that under that contract the payment for lighting was to be made in the money that was then current and in circulation in the island of Porto Rico; that was what was meant by 'current foreign money' when the term was used in that contract; that was what was meant by the term 'current money' in that contract, or even by the term 'currency' in that contract."

VII.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"Therefore I say to you that under this contract these payments for these lights were to be made in American gold or silver, or in Spanish, Mexican, Colombian, Peruvian, Chilian and Venezuelan gold. Now the party could discharge it in any one of these mediums of exchange, and the testimony is before you as to what that money was worth."

VIII.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"If their minds met and the money was paid by the one and received by the other without any protest, then that would have made a change in the kind of money the contract was to be discharged in. If the City of San Juan owed the plaintiff a certain amount for lighting and the City of San Juan offered to pay so much money and at the same time said to the debtor (creditor?), 'I dispute your claim; that is all that I will pay for it, and you must accept this in satisfaction or have nothing,' and then the debtor (creditor?) accepted it, it would be a settlement; but if the City of San Juan merely paid a certain amount to the debtor (creditor) and the debtor (creditor) protested at the time that it was not as much as he was entitled to, that would reserve his rights in the matter, and he would be entitled to receive and credit that amount on the claim and then sue for the balance of it afterwards."

IX.

The court erred in charging the jury, against the objection and exception of the defendant, in the following language, to wit:

"So far as any claim on the part of the defendant for fines and delinquencies in complying with this contract, there is

no testimony in reference to them, and you can find nothing on that account."

X.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you find from the evidence that the defendant was bound to pay the plaintiff for its services in 'current money,' which phrase is the equivalent of 'money in current circulation'—and I charge you that the contract so provides, and does not provide for payment in any kind of foreign money—and you further find that through a series of years payment was made under the contract by defendant and accepted by plaintiff in money of a certain kind and value, then such payment and acceptance is cogent evidence of what was meant by the phrase 'current money' as used in the contract between the parties."

XI.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"But although a written contract exists between the parties, these same parties may by subsequent verbal agreement or by a well-defined subsequent course of action under the contract change the terms of that contract; and if you believe from the evidence that the plaintiff through a series of years received and accepted from the defendant payment for its services in money of a certain kind and to a certain amount as such payments became due from time to time, then you are warranted in finding that the parties by such course of action had changed the provisions for payment originally made, even though such provisions had called for money of a different kind or to a different amount."

XII.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you find that the plaintiff through a series of years continued to receive payment from the defendant for its services in Porto Rican currency to the amount called for by the contract, knowing that the defendant made such payments as and for a full discharge of its obligations under said contract, then the plaintiff by the acceptance of such payments with that understanding is estopped to claim that payments should have been made in any other medium or to any larger amount."

XIII.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you believe from the evidence that at the time of the assignment admitted to have been made to the firm of Müllenhoff & Körber the amount then due from the defendant to the plaintiff was compromised and fixed, then the plaintiff is bound by that compromise; and, the amount then agreed upon having been subsequently paid, the plaintiff can make no claim for any services rendered before the end of the period covered by that compromise."

XIV.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"As a matter of law the meaning of the phrase 'current money' as used in the written contract introduced in evidence is that money which was in ordinary circulation in this community at the time any payment became due under the contract, and is not confined to the money which was current at the time the contract was made."

XV.

The court erred in refusing to instruct the jury, as requested by the defendant, in the language or to the effect following, to wit:

"If you find from the evidence that on the 20th day of January, 1899, the obligation from the defendant to the

plaintiff, either by the written terms of the contract or by the practical construction put upon it by the parties subsequently to its making, was dischargeable in the currency of Porto Rico, then I charge you as matter of law that the plaintiff is entitled to recover only sixty cents in American gold for each dollar of Porto Rican currency which it would have been entitled to receive if no change of money had been made."

I.

The assignments numbered I, II, III, and XIV may be considered together, as they all refer to the kind of money by which the compensation named in the contract was to be measured and the amount fixed.

Andres Crosas was introduced as a witness for the plaintiff to prove what money had been in circulation in Porto Rico and its value (Record, pp. 42–44). On direct examination he was asked, "In the year 1875 what kind of foreign money was in circulation in Porto Rico?" to which the objection was that the question was immaterial, in that no claim was being made for payments due in 1875 or any other year until 1899, and that current money in 1875 may have been entirely different from current money in 1899 and 1900 (Record, p. 42). The same idea was carried out in cross-examination by the two questions whose exclusion is the subject of the second and third assignments, and by the charge requested, the refusal of which is the subject of the fourteenth assignment.

The question of payment is referred to in those parts of the contract and proposals leading up to it found on the pages and lines of the printed record following, to wit: Page 16, last line; page 17, last line; page 20, line 4; page 24, line 29; page 25, 38th and 41st paragraphs or conditions; page 26, 7th line from bottom; page 29, line 30; page 30, line 25; page 36, line 6, and page 37, 6th line from bottom. From these extracts it appears that the price of the lamps was three dollars in "currency" or "current

money." It is not denied that these two terms are synonymous, being different translations of the Spanish phrase "moneda corriente;" but we do not agree that the phrase "circulating foreign money in commerce" has a like meaning. We contend that when that phrase was used in the 8th paragraph of the "administrative conditions" of the proposal (Record, p. 20, top), it showed a difference in value between that money and "official currency," and that said paragraph meant only that the *medium* of payment to be used was the foreign money, probably because it was more convenient at that time and *not* that the *value* of the service was thereby *fixed* in *terms* of foreign money. This is made clear by the provision of the same paragraph that this foreign money was to be "received without any premium that will equalize it," etc. This is the only place in which *foreign* money, or the money of commerce, is mentioned in connection with the payments. In all other places, including those *fixing the price*, currency or current money is spoken of.

It will be noticed that plaintiff introduced *no* evidence touching upon the question of payments actually made under the contract at *any time*, but left it to the defendant to bring out upon the cross-examination of the witness Scott (Record, p. 40) that during more than ten years, during which he had managed the company's affairs, payments were always made in terms of Mexican or Porto Rican "pesos." We submit that the most favorable contention possible for plaintiff was that the terms of the contract regarding payment were ambiguous, in which case the *actual construction* put upon those terms by the parties would be controlling; hence, as no claim was being made as to non-payment for any service during the first twenty years of the contract, the question of the circulating medium at the time of its making must have been immaterial and the only material matter during that time was in what money payments were actually made and the

mediums in circulation at different periods in which such payments might have been made; but, having allowed that question, we certainly had a right to follow it up in cross-examination by asking how long that foreign money continued to circulate and how many changes in circulating mediums had taken place since. Scott had already testified that he had accepted the Mexican and Porto Rican "pesos" because he could not get anything else, and we should have been permitted to show the existence of other mediums during the same period as bearing upon the question of such acceptance being forced or voluntary. Further than that, the only ground of objection was (Record, p. 43) that "the contract could refer to nothing else than foreign money which was current here at the time the contract was made," which we have shown, we think, to be an erroneous assumption. Hence, as against that objection, the witness should have been permitted to answer.

Such evidence, moreover, was admissible upon the ground set out in the charge requested and refused, as stated in the XIV assignment.

If a contract is made payable in terms of currency or current money, oral evidence is always admissible as to the meaning of those terms as between the parties (Thorington *vs.* Smith, 8 Wall., 1).

In the absence of such evidence, where the performance of the contract extends through many years, the actual construction put upon the contract by the parties, and the medium in which partial payments have been made, is conclusive as to their intention.

Chicago *vs.* Sheldon, 9 Wall., 50.
Cook *vs.* Lillo, 103 U. S., 792.
Dist. of Columbia *vs.* Gallaher, 124 U. S., 505, 510.
The Confederate Note case, 19 Wall., 548.
Bissell *vs.* Heyward, 96 U. S., 580.

The head-note to the last cited case says:

"A decree or judgment, when rendered upon a contract payable in Confederate Treasury notes, should be for a sum equal to the value of those notes, not in the gold coin, but in the legal-tender currency of the United States, at the time when and place where they were *payable*."

See also—

Deering *vs.* Parker (Colonial appeal from Mass., A. D. 1760), L. C. P. Co. ed. U. S. Sup. Ct. Rep., bk. 1, p. 925.

If the provisions of the contract were to any extent ambiguous, we should have been allowed on cross-examination to go at large into the question of circulating mediums at different times during the performance of the contract as affecting that question, as well as the testimony previously given by plaintiff's manager, Scott.

II.

We do not care to urge the fourth assignment of error, as it was assigned under a mistaken impression that one of defendant's witnesses had been examined as to its correctness before it was offered.

The fifth, sixth, seventh, and tenth assignments may be considered together. The first three named are exceptions to charges given by the court explaining in what kind of money payments under the contract were to be made. We have already referred to the pages of the record on which those parts of the contract referring to payments are printed, and have shown that no reference to "foreign money in commerce" is made in connection with payments *for lights*, except at the top of page 20, which refers to the *medium* of payment and not to the *amount*. We therefore contend that the charge excepted to by the fifth assignment misstated the

facts proven in the case, while those charges excepted to by the sixth and seventh assignments misstated the law applicable to the facts proven, and in both ways the jury were misled.

The testimony of the witness Crosas showed that even in 1875 there was a distinction between Spanish "currency" which was circulating here and the foreign gold. Judge Hord, counsel for plaintiff below, admitted as much when he said, in reply to a question of the court (Record, p. 43): "It (the contract) specifies no foreign country, but it makes a distinction between the money of that foreign country, whatever it was, and *Spanish money*." Farther down upon the same page witness Crosas is recorded as saying, "Nearly all the Spanish silver had been taken away from here." And again, further down, "It was agreed between the Treasurer and the merchants at large here in the island to receive dues in American silver, giving .526 per cent. premium on the Spanish silver, although you could not get the Spanish silver." So if we are correct in our contention that the payments were to be made in "current money" and not in "foreign money," this testimony of their own witness shows that there was a decided difference in value between the two, and the charge of the judge could not be correct.

Further, the charge contained in the seventh assignment states that payments might be made in any one of these foreign moneys; but if that were true the evidence gave the jury no fixed criterion for the assessment of damages, because the same witness testified that each of these foreign moneys had a value different from the others (Record, p. 42, bottom), and all were superior in value to the Spanish money.

On the other hand, we claim that our charge requested and its refusal, made the subject of the tenth assignment, should have been given as correctly stating the law: First, that payments under the contract were to be made in "current money"—meaning "money in current circulation"—and, second, that payments made under the contract in a

certain kind of money and accepted by the creditor showed what had been the actual construction of the phrase "current money" and was cogent evidence thereof. The authorities cited near the close of the previous subhead of this brief support this contention also. Indeed, in one of those cases, the court go even further, using the following language:

"We think that the practical construction which the parties put upon the terms of their own contract, and according to which the work was done, must *prevail over* the literal meaning of the contract, according to which the defendant seeks to obtain a deduction in the contract price."

District of Columbia *vs.* Gallaher, 124 U. S., at 510.

See also—

Topliff *vs.* Topliff, 122 U. S., 121, 131.

III.

The eighth, eleventh, and twelfth assignments may be considered and argued together. The eighth excepts to a charge given by the court, and the eleventh and twelfth are exceptions to charges requested and refused—all treating of the question of what was necessary in order that rights of parties under the contract should be affected by subsequent agreement or conduct. The charge given by the court fixed the criterion at such evidence as would prove the making of a new contract—*i. e.*, an actual meeting of the minds—and went far toward giving the jury to understand that it must be an express agreement. The first charge asked and refused proceeded on a like basis of agreement or understanding, but claimed that such understanding could be deduced from conduct alone. The second charge refused proceeded upon the theory of estoppel by conduct, irrespective of the mental attitude of the parties, and to that extent go the authorities.

In the Am. & Eng. Encyclopædia of Law, vol. 22, page 539, the following statement is made regarding payment and its effects:

"The acceptance of payment in a different medium from that called for in the contract is effective to discharge the indebtedness. In fact, whatever of value the creditor accepts as payment, though different from what he could be required to accept, will operate as payment and discharge the indebtedness; and this is true though the payee *protests* against being required to accept such medium, and though it is of a depreciated value as regards the medium stipulated for."

A case which seems absolutely conclusive of the one at bar upon the point under discussion is that of Savage *vs.* United States, reported in 92 U. S., 382. In that case it appeared that the testator of plaintiff in error had purchased $15,000 of United States Treasury notes, and, upon notice that the Government was ready to redeem the same, claimed that he was entitled to the amount in gold, which was then at a premium. The Government refused to pay in gold. The remaining facts and the conclusions of the court are best stated in its own language:

"Throughout the testator of the plaintiff insisted that it was his right to have the notes paid in gold; and on the 3rd of March, 1866, he caused the notes to be transmitted here to certain bankers, with instructions to present the same at the Treasury and ask for the payment of the same, with interest, in gold, and with directions that, if the payment in gold were refused, to accept the currency under protest. Payment in gold was subsequently refused; and the agents accepted the principal and interest after maturity in legal-tender notes, *under protest*, as directed by their employer. * * *

"Payment of the Treasury notes was accepted by the testator of the plaintiff; and it appears that he, at the time the payment was made, then being in full life, surrendered the notes to the Secretary for cancellation. Neither deception, mistake nor undue advantage, is suggested; but the whole record shows that it was an honest difference of opinion between the Secretary and the decedent as to the rights of the

parties, and that it terminated by the voluntary acceptance of the legal-tender notes, on the part of the agents of the decedent, in lieu of gold, as offered by the Secretary, and by the surrender of the Treasury notes to him for the United States. Such an acceptance of payment was a waiver of the claim antecedently made, and amounted to a full discharge of the same, independently of the question whether the notes accepted in payment are or are not a legal tender, as insisted by the counsel for the defendants. * * *

"Gold was claimed; but the Secretary refused to pay in that medium; and the agents of the decedent, acting in pursuance of his instructions, accepted the medium offered by the Secretary, knowing full well that it was offered in full discharge of the Treasury notes; and it appears that they not only accepted the medium of payment offered by the Secretary, but surrendered the Treasury notes to the Secretary, as the well known financial agent of the United States. * * *

"Viewed in the light of these suggestions, it must be held that the protest, being unauthorized by law, was a mere *ex parte* act, without any legal efficacy to qualify the voluntary surrender of the Treasury notes, which both parties understood to be absolute and unconditional. * * * Prompt payment, no doubt, was desired; but the decedent was under no legal compulsion to accept any other medium of payment than that which he demanded. * * * They surrendered the securities, and asked leave to enter the protest in the same communication, which was, in effect, saying 'Our principal still thinks he ought to be paid in gold; but, inasmuch as the Department declines to pay in that medium, he has decided to accept payment in the medium which you propose'" (92 U. S., 384–389).

This last illustration is very similar to the one from which the court in its charge drew the opposite conclusion, and fits perfectly the attitude of the gas company, as shown in the testimony of its manager, Scott (Record, p. 40).

To the same effect in principle are the following cases:

United States *vs.* Justice, 14 Wall., 535.

Mason *vs.* United States, 17 Wall., 67.

Baird *vs.* United States, 92 U. S., 430.

Washington *vs.* Opie, 145 U. S., 214.

Chicago, etc., R. R. Co. *vs.* Clark, 178 U. S., 353.

We therefore submit that the charge given and excepted to was not a correct statement of the law, but that a party is bound by his *conduct* in accepting and acting upon the proposals and conduct of the other party, irrespective of any *express* consent or acquiescence, and that the rights of the parties are determined upon principles of estoppel rather than of the meeting of the minds in a new contract; hence, that the charges requested by defendant should have been given.

IV.

The ninth assignment of error is to a charge of the court which told the jury that there was no evidence in support of defendant's plea of set-off for fines and delinquencies.

Manuel Egozque, a witness for the city, testified that as mayor of the city he had had dealings with Mr. Scott as representative of the plaintiff company, and had charge of the settlement claimed by the city to have been made with said Scott, at which time, "during the conversation, Mr. Scott was discussing as to there being a larger quantity owing to his company, because he would not recognize the fines which, for want of proper lighting, had been imposed, and in the general liquidation fines had been put on his company in accordance with the stipulations of the contract (printed Record, p. 45, bottom). He further testified (top of p. 46) that "a general account of the amounts owing to the company, together with the fines which had to be deducted, was shown to Mr. Scott at that time," and the amount shown by this account is then given.

We submit, therefore, that defendant had a right to have this testimony in regard to fines considered by the jury as decreasing the amount due the plaintiff, in the event they found (as they must have done) that the transaction resulting in the assignment to Müllenhoff & Körber did not amount to a compromise and settlement. Under said

charge the jury were not allowed to consider this testimony in any aspect of the case.

V.

The thirteenth error assigned is to the refusal of the judge to charge that if they should find that at the time of the assignment by plaintiff company to Müllenhoff & Körber of the sum of $5,196.88, the amount then due from plaintiff to defendant, "was compromised and fixed," then plaintiff was bound by that compromise and could recover no more for services up to that time.

This charge the court refused to give in the terms requested, but did charge as follows:

"If you believe from the testimony that that much was transferred to Müllenhoff & Körber in June, 1900, and that it was understood and agreed by the parties at that time that that was all that was owing up to that time, why then, that cuts off any claim by the St. John's Gas Company up to that period of time, and any item of this account sued on prior to that time in June would be cut off by that settlement, if there was such a settlement" (printed Record, p. 54, middle).

The court failed as usual to keep the distinction between a settlement for the *full amount claimed* by the creditor and a *compromise*. It was not necessary that the St. John's Gas Company should agree that the amount of the settlement was the full amount owing. It was enough if they agreed to take the amount offered as a *full satisfaction* of the debt, whatever it was as there was a dispute as to how much was in fact owing.

As said by Mr. Chief Justice Waite in Baird *vs.* United States:

"It is, no doubt, true that the payment by a debtor of a part of his liquidated debt is not a satisfaction of the whole,

unless made and accepted upon some new consideration; but it is equally true, that, where the debt is unliquidated and the amount is uncertain, this rule does not apply. In such cases the question is, whether the payment was in fact made and *accepted in satisfaction*" (96 U. S., 430).

The decisions of this court are full of like applications of the rule. A settlement upon the terms outlined in the charge of the court would not have been a compromise at all. We therefore submit that we were deprived of the benefit of a consideration of the true principles of compromise by the judge's refusal to give the charge as requested.

VI.

The last assignment of error refers to the refusal of the judge to charge the jury that if, on the 20th day of January, 1899, the obligation of the contract could be discharged in Porto Rican currency, either by the terms of the contract or by the practical construction subsequently put upon it by the parties, then the recovery should be limited to sixty cents in American gold for every peso due in said currency.

The judge gave a charge to the jury which recognized the legal rate of exchange which had been established by a general order of the then military government of Porto Rico, having the force of law, promulgated on the date stated, but in so charging he coupled his statement with the erroneous limitations as to the necessity for a course of conduct to amount to a meeting of the minds and for the payments to have been accepted without objection or protest—in other words, the same errors previously complained of were repeated in this connection—whereby the advantage to the defendant of the charge as to rate of exchange was wholly nullified (printed Record, pp. 53, 107).

VII.

For the errors complained of; the judgment of the court below should be reversed and a new trial granted.

Respectfully submitted.

N. B. K. PETTINGILL,
Attorney for Plaintiff in Error.

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Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 41.

THE CITY OF SAN JUAN, PLAINTIFF IN ERROR,

vs.

THE ST. JOHN'S GAS COMPANY, LIMITED.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR THE DEFENDANT IN ERROR.

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STATEMENT.

This action was brought by the St. John's Gas Company, Limited, a corporation under the laws of Great Britain and Ireland, against the municipality of the city of San Juan (exactly, San Juan Bautesta de Puerto Rico), a municipal corporation under the municipal and provincial laws in force in Puerto Rico prior to December 31, 1896, to recover a balance of $12,601.39, with interest thereon, alleged to be

due to the former under a certain contract with the latter for lighting the streets and public buildings with gas.

The contract sued upon was effected August 21, 1875, after several months of prior advertisement and negotiations. It was executed in the "loyal city of St. John's Baptist of Porto Rico," later more shortly called San Juan.

The contractor or concessionaire was one Julio E. Steinacher, who was represented at and in the execution of the contract by one Joseph Nadal y Rey, his general and special attorney for such act (13). The contract covered a period of "twenty-five (25) years from the day that it will take place" (19) and expired by the terms of the limitation so expressed September 16, 1900.

The plaintiff's demand covered the period from November 30, 1899, to September 16, 1900, the date of expiration of the contract (2, 3), and did not comprehend any moneys which may have accrued due prior to said first-mentioned date (40).

It appears from the recitals of the "public instrument," which, besides the express terms of the contract proper, sets forth the antecedent negotiations between the parties, that the city of San Juan owned and possessed certain municipal gas-works, together with the necessary buildings and a considerable supply of gas-making materials, and, "not doubting that the service (of public lighting) would be done with more advantage when the gas-works belonged to a private individual, who would always have them in a perfect state of order" (14), the municipality, acting by its duly constituted authorities, had determined "to put up to public tender the service of the public lighting

of this city, including the district of the 'Marina'" (13), and to "sell the gas-works and all that constitutes the establishment of the gas-works, 'to-day entirely useless'" (14). By the "Conditions of the Corporation" set forth in the advertisement for proposals it was made "an indispensable condition" that bidders for the lighting should also bid for the purchase of the gas-works buildings, machinery, pipes, and materials referred to (17, 18), and it was further provided that the contractor for the lighting should, in fact, become the purchaser of such plant (19). The advertisement also announced that it was to be "well understood, also, that the sum fixed for the public lights will be of three dollars in currency (monthly) for each lamp in the city, including the district 'de la Marina,'" * * * "and that the value of the said buildings, apparatus, &c., according to the appraisement made by the municipal architect" * * * "amounts to $31,741.83, currency" (17, 18).

Article 8 of the "Conditions" informed intending bidders that (as translated, p. 20) "The payment to the contractor will be made in the circulating foreign money in commerce for the value that is received without any premium that will equalize it to the Spanish official current money."

The contractor, Steinacher, first proposed to undertake "the service of the lighting for the sum of $3 monthly in currency" (16), and to purchase the gas-works buildings, materials, &c., "for the sum of $22,000 currency" (17). This offer was rejected, and, the "conditions" having been somewhat modified in matters not important here, after further advertisement Steinacher again proposed "to take the gas-

works" and pay therefor "the sum of thirty-one thousand seven hundred and forty-one dollars [and] eighty-two cents in currency and take under his charge the public lights for the sum of three dollars monthly in currency for each lamp" (29). This proposition was accepted by the municipal authorities (31), and the contract proper, which appears at pages 35 to 38 of the Record, was signed by the parties.

By article 2 the contractor bound himself "to supply daily to this city and the district of 'La Marina' the lights with hydrogen gas" * * * "for the sum of three dollars as already stipulated," and by article 5 "to pay to the excellent corporation of this city $31,741.80 in foreign commercial currency" for the gas-works loose material, such payment to be made in "5th parts after the 1st year that the works have been in working order and successively until the whole sum is paid" (36).

By article 7 it was provided that the contractor, Steinacher, might sell the said gas-works "and transfer the present contract" by giving notice to the corporation and continuing in force certain mortgage guarantees provided for by the proposals and contract (36, 37).

By paragraphs second and third of the "Conditions" the contractor was required, within fifteen days "after the approval of the (his) tender being notified," to produce a "definitive guarantee" of $6,000 in cash or $9,000 on a house of this city, 1st mortgage, to the satisfaction of the municipality" (19). In fulfillment of this provision Steinacher offered a first mortgage on two houses which, with the ground on which they stood, were appraised by the municipal architect "at thirty thousand pesetas or six thousand dollars," and "twenty thousand pesetas or four thousand dollars in

currency," respectively (32). On re-appraisal the houses, without the grounds, were appraised, respectively, at "26,000 pesetas or $5,200," and "19,000 pesetas or $3,800 in currency" (34).

The contractor, Steinacher, having taken possession of the gas-works, buildings, &c., purchased as above indicated, entered upon the performance of the contract to light the streets and public buildings of the city of San Juan, and continued in the performance of the same until "about 1878," when he transferred the contract to the defendant in error, the plaintiff below, which continued its performance until the end of the contract period (R., 39).

Of the total $14,600.66 claimed to be due under plaintiff's bill of particulars the sum of $1,999.27 was for interest to September 16, 1901, and $115 was the alleged value of certain lime, coke, coal, and gas seized by the city (3).

No evidence was introduced tending to prove the latter item, and the jury was instructed by the trial court to disregard it (55).

The defendant pleaded *non-assumpsit*, *nil debet*, and set-off "in an amount equal to the plaintiff's claim, for defaults committed by the plaintiff in its contract to furnish lights to the defendant" (4).

No testimony was introduced tending to show that any fines or delinquencies had been assessed against the plaintiff for failure to fulfill the obligations of the contract, and the court instructed the jury that it could "find nothing on that account" (54).

Defendant also filed an additional plea to the effect that plaintiff had assigned to the firm of Mullenhoff & Korber the sum of $5,196.88 of the total of said claim, "and that after the last pleading in this action, to wit: on or about the 19th of March 1902 the defendant canceled and discharged said claim as to said amount by payment of the same to said firm" (6).

On the trial it was conceded that said sum of $5,196.88 had been paid by the defendant to said firm (39, 40, 42), and the jury was instructed by the court to deduct such sum from the amount claimed, "provided of course you find anything for the plaintiff" (51).

The plaintiff offered in evidence the written contract above referred to and it was admitted without objection (12), as was also evidence tending to prove performance of its obligations "up to the morning of the 16th of September" (1900) (12). Plaintiff's witness Scott testified that he assumed "the management of the company here in San Juan about the year 1890; since that time I have collected from the city all the moneys that the city has paid" (40). The city "never paid what was due; they always paid in Mexican money or pesos, and under verbal protest from me." I accepted such payments because "I could not get anything else;" from November, 1899, to August, 1900, he received small sums on account (40) which were paid in American gold (41). In response to the question, "In what kind of money did you receive the several payments made by the city?" witness replied, "In American money" (42).

Plaintiff also gave evidence tending to prove that in the year 1875 the foreign money or currency current in Porto

Rico was "American silver and American gold and old Spanish gold and some Mexican and Colombian gold." The American gold was at 5 per cent. premium; the Spanish doubloon was at 6¼ per cent. premium; the Mexican, Colombian, Venezuelan, Peruvian, and Chilean doubloons, actually worth $16, were rated at $16.50, and the Spanish ysabelinas were at 5 per cent. (42–43). The value of the American double eagle was rated in "American silver, because nearly all of the Spanish silver had been taken away from here." "The most of the money in circulation here then was American silver and American gold and old Spanish doubloons." "The American silver was at par." In paying dues at the custom-house "you had to pay them in real Spanish coin, and, as it would not suit to give Spanish gold and you could not give Spanish silver, it was agreed between the treasurer and the merchants at large here in the island to receive dues in American silver, giving .526 per cent. premium on the Spanish silver, although you could not get the Spanish silver" (43).

On cross-examination the court refused to permit the witness to say how long the above moneys continued to be circulating mediums in the island or what money was current in the island in 1890 or between 1890 and 1899, to which rulings defendant duly excepted (43, 44).

The defendant offered evidence tending to prove that during the year 1900 and "previous to the change of the money Mr. Scott received no other than provincial money," nor did he "ever make any objection to the receipt of the provincial money" (44); that at the time of the assignment to Mullenhoff & Korber a written agreement had been signed by Scott, which amounted to an account stated, and said paper-

writing was put in evidence (45). It recites a balance of 7,228 pesos and eighty cents, "equivalent of $4,337.32 in favor of the firm of Mullenhoff & Korber, being therefore the municipal corporation relieved from any compromise with Mr. Scott concerning the said amount, without any prejudice to the resolutions to be passed some time in the future about the claims previously filed by the said contractor" (45).

In rebuttal the witness Scott, referring to said instrument, testified: "The arrangement was that they were to pay to Mr. Korber all they could pay to the end of June, and afterwards reclamations [were] to be made by me if the accounts were not correct;" "the clause in that document which says 'without any prejudice,' etc., etc., refers to my reclamations as to the account between the city and the company without reference to Mullenhoff & Korber;" "these claims or reclamations which I was to make referred to the monthly accounts for gas lights; the claims were for arbitrary fines by the city" (50). "As the city never supplied any statement of accounts to me, I could not state that I was satisfied with them; this document was simply an agreement to pay Mr. Korber so much money, subject to my reclamations thereafter" (51).

The bill of exceptions contains all the evidence given in said cause (51).

Both sides having rested, the court, in so far as the controversy before this court is concerned, instructed the jury,

Frst, "The main question in the case, if you find there is anything owing, is in what character of money you are to estimate it."

"In the proposal which was made by Mr. Steinacher it was stated that, so far as the lighting was concerned, he would do it for $3.00 per lamp monthly in currency. Now, currency means what was passing as money in the country; what was current as money in the country. * * * It is stated in the contract in one place that payment was to be made to the contractor in circulating foreign money in commerce. * * * The gas-works were sold, as the contract shows, for a certain sum of money, thirty thousand dollars, payable in foreign commercial money. * * * So far as the construction of that contract is concerned, you must accept the law as given you by the court. You have no right to construe the contract yourselves and determine what it means—that is a matter for the court to do. If the parties specifically contracted for a certain kind of money then the contract is payable in that kind of money. Parties must be considered as contracting with reference to the existing law where the contract is made, or the state of affairs existing by the then law. The fact that the law may be changed so as to make the performane of the contract more burdensome or expensive does not change or discharge the contract. * * * I tell you, as a matter of law, that under that contract the payment for lighting was to be made in the money that was then current and in circulation in the island or Porto Rico. That was what was meant by 'current foreign money' when the term was used in that contract. That was what was meant by the term 'current money' in that contract, or even by the term 'currency' in that contract" (52). * * * "The parties making that contract took into consideration the value of money in the island at that time, and the money that was then circulating in the island. You are to determine what that was from the testimony. * * * There is no showing, as far as I recollect, that pesos, as they are termed, or Porto Rican money, was circulating in Porto Rico then. * * * Therefore, I say to you that under this contract these payments for these lights were to be made in American gold or silver, or in Spanish, Mexican, Colombian, Peruvian, Chilean and Venezuelan gold.

"Now, the party could discharge it in any one of these mediums of exchange, and the testimony is before you as to what that money was worth" (53).

Second. * * * "if the one had paid and the other

without objection had accepted through a course of years money of a certain kind and meant as payment of what was owing on this contract from time to time, then you may find that the parties had changed the kind of money with which the contract might be discharged, and if this was in Porto Rican pesos, then the plaintiff would be only entitled to recover in American dollars at the rate of sixty cents on the American dollar, whatever amount you may believe from the evidence he is entitled to recover in Porto Rican currency" (53).

Third. As to the claim of account stated between the parties by which the amount assigned to Mullenhoff and Korber was agreed to be the total amount due from the city at that time, the court charged the jury that if they believed from the testimony—

"that it was understood and agreed by the parties at that time that that was all that was owing up to that time, why then, that cuts off any claim by the Saint John's Gas Company up to that period of time, and any item of this account sued on prior to that time in June would be cut off by that settlement, if there was such a settlement" (54).

By way of recapitulation the court reiterated its instructions upon the above three points in somewhat more terse language (54, 55).

The jury returned a verdict for the plaintiff in "the sum of $8,761.35 in damages," and judgment was entered accordingly (7, 8).

JURISDICTION.

By section 34 of the "Foraker Act" (April 12, 1900) it is provided that the district court of the United States for the district of Porto Rico "shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States, and shall proceed therein in the same manner as a circuit court."

By section 35 it is provided:

"That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States; * * *

By section 3 of the act of March 2, 1901 (31 Stats., 953), the jurisdiction of the district court of the United States for Porto Rico in civil cases was extended so as to embrace controversies "where the parties or either of them are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of one thousand dollars."

The district court of the United States for the district of Porto Rico is a "territorial" or "colonial" court. As such its jurisdiction is as the Congress of the United States may from time to time, until the island becomes "a part of the United States," declare it to be. The limitations imposed by section 2 of Article III of the Constitution with respect to the

"judicial power" have no application to such courts. Such courts "are legislative courts, created in virtue of the general right of sovereignty which exists in the Government;" the jurisdiction with which they are invested is not a part of the judicial power of the Constitution, but is conferred by Congress, in the exercise of those general powers which that body possesses over the Territories of the United States; and in legislating for them Congress exercises the combined powers of the General and of a State government.

American Ins. Co. *vs.* Canter, 1 Peters, 511.

Benner *vs.* Porter, 9 Howard, 235.

Downes *vs.* Bidwell, 182 U. S., 265 *et seq.*

The Congress having conferred upon the district court of Porto Rico jurisdiction in cases "where the parties or either of them are" * * * "citizens or subjects of a foreign State or States wherein the matter in dispute, exclusive, &c., * * * exceeds the sum or value of one thousand dollars," it is apparent that the district court had jurisdiction of the controversy by reason of the alienage of the plaintiff, the requisite sum or value in dispute appearing.

That this court has jurisdiction to review the judgment of court below on writ of error cannot be doubted.

Hijo *vs.* United States, 194 U. S., 315, 320.

Royal Insurance Co. *vs.* Martin, 192 U. S., 149, 156.

ARGUMENT.

The plaintiff in error complains of the judgment below upon various grounds, which are set forth in fifteen (15) assignments of error.

Of these assignments of error, however, seven (7), being numbered 1, 2, 3, 5, 6, 7, and 14, relate to the single question of the character of the money in which, under the strict terms of the contract itself, payment for services rendered was intended to be made.

Five of the remaining assignments of error, being numbered 8, 10, 11, 12, and 15, present in varying phases the question as to the effect of the acts of the parties in making and receiving payments in a particular medium through a series of years—the defendant below assuming apparently that the evidence disclosed a custom to pay in Porto Rican or provincial money without objection or protest on the part of the plaintiff company.

Two of the remaining assignments of error, being numbered 4 and 9, bear upon the plea of set-off and the refusal of the trial court to admit in evidence a "bill of particulars" offered by the defendant to substantiate such set-off (47–48). No evidence whatever was offered on the part of the defendant to substantiate the contents of said "bill of particulars," and the trial judge excluded it upon that ground alone. Counsel for plaintiff in error at page eleven (11) of his brief waives the 4th assignment of error as being untenable (see 11), but assignment numbered

nine (9) relates to the same subject-matter and is equally untenable, for notwithstanding the witness Egozcue testified that "a general account of the amounts owing to the company, together with the fines that had to be deducted, were shown to Mr. Scott at that time," as stated in the brief of plaintiff in error at page 16, no evidence whatever was offered to prove the account referred to nor the amount of "the fines which had to be deducted," which the account was supposed to contain; nor was there any evidence tending to connect the statement referred to by Egozcue with the "bill of particulars" set forth at page 48 of the record, which, as above stated, was excluded by the court.

It is unnecessary for us to refer to these two assignments of error further.

The sole remaining assignment of error, being numbered 13, relates to the refusal of the trial court to charge the jury with respect to a "compromise" assumed to have been entered into between the plaintiff, acting by its manager, Scott, and the defendant, acting through its mayor, Egozcue. There is no evidence whatever tending to show that such a "compromise" was entered into or was ever contemplated between the parties. The evidence upon which plaintiff in error relies to support such assignment relates to the transaction with Mullenhoff and Korber, which was evidenced by the paper-writing set forth at pages 44 and 45 of the record. So far from amounting to a compromise of a disputed debt or the acceptance by the creditor of the amount mentioned as in full satisfaction of the amount due, the paper itself expressly recites that the amount mentioned should be held as a credit in favor of

Mullenhoff and Korber, the municipal corporation being "therefore" "relieved from any compromise with Mr. Scott concerning said amount, without any prejudice to the resolutions to be passed sometime in the future, about the claims previously filed by the said contractor."

Inasmuch, however, as the parties differed between themselves as to what was the true meaning of the transaction recited in said instrument, and their respective intentions at the time of executing it, and as Egozcue testified that it was intended to evidence a settlement in full to its date, while Scott testified it was merely intended to operate as an assignment of a certain sum to Mullenhoff and Korber, and was not intended to evidence an agreement with Egozcue "that the account as stated by the city of the amount due him was correct" (49), the trial judge left the point to the jury, instructing them that if "it was understood and agreed by the parties at that time (the date of the instrument) that that was all that was owing up to that time, why, then, that cuts off any claim by the Saint John's Gas Company up to that period of time, and any item of this account sued on prior to that time in June would be cut off by that settlement, if there was such a settlement." "If * * * it was merely a transfer of a part of a claim it does not cut off his (its) right to claim anything prior to the month of June. So far as any claim on the part of the defendant for fines and delinquencies in complying with this contract, there is no testimony in reference to them and you can find nothing on that account."

The point appears properly to have been left to the jury. The instruction given concerning it was perspicuous and eminently judicial in tone and character. No exception to

its form was noted by the plaintiff prior to the retirement of the jury; and as the jury must be presumed to have been guided by its letter and spirit in reaching its verdict, there would seem to be no necessity of recurring to the point again in this brief.

If the above points with respect to assignments of error numbered 4, 9, and 13 are well taken, there remains for discussion but the single point as to the medium of payment under the terms of the contract, and as a subordinate element the question as to whether the parties by a course of dealing between themselves subsequent to the date of the contract itself changed its terms with respect to the medium of payment.

Upon the main point the court charged the jury as follows:

"I tell you, as a matter of law, that under the contract the payment for lighting was to be made in the money that was then current and in circulation in the island of Puerto Rico. That was what was meant by 'current foreign money,' when the term was used in that contract. That was what was meant by the term 'current money' in that contract, or even by the term 'currency' in that contract. It was the money that was circulating as money and as the medium of exchange in Puerto Rico at that time and the parties could not have foreseen, for instance, or it is not possible that they would have foreseen, the change of government, or that Puerto Rico for instance, might in the future have belonged to France which may not have had, for instance, a medium of exchange worth more than ten cents in proportion of the money then circulating on the island. If that could be so, then the city of San Juan would have obtained these lights at ten cents each, which, of course, would be very unreasonable.

"The parties making that contract took into consideration the value of money on the island at that time, and the

money that was then circulating in the island. You are to determine what that was from the testimony. If I recollect correctly it was shown in evidence that the money then circulating in the island of Puerto Rico was Spanish gold, American gold, Venezuelan, Mexican, Colombian, Peruvian and Chilean gold, and I believe American silver. There was no showing, as far as I recollect, that pesos, as they are termed, or Puerto Rican money, was circulating in Puerto Rico then. This contract evidently did not mean that the payment was to be made in Spanish gold, because by one of the paragraphs in the contract it was excluded. Therefore, I say to you that under this contract these payments for these lights were to be made in American gold or silver, or in Spanish, Mexican, Colombian, Peruvian, Chilean and Venezuelan gold.

"Now the party could discharge it in any one of these mediums of exchange, and the testimony is before you as to what the money was worth."

As the contract referred to was made in Porto Rico between parties residing in that island and was intended to be and was in fact fully performed within the territorial limits of that island, it is plain that any legal question growing out of it or its terms must be referred for settlement to the law of the place in force at the date of its execution. That law was the Spanish civil law in force in the island of Porto Rico.

By the eighth "Condition," page 20 of the record, it was provided that—

"The payment to the contractor will be made in the circulating foreign money in commerce for the value that is received without any premium that will equalize it to the Spanish official currency."

The last phrase of this "Condition" is evidently the clause of the contract referred to by the learned trial judge

as excluding Spanish currency from the mediums of payment under the contract.

The witness Crósas testified that the foreign money circulating in the island in 1875 was American silver and gold, old Spanish gold, and Mexican and Colombian gold (42); also that "the most of the money in circulation here then" was "American silver and American gold and old Spanish gold doubloons." "The American silver was at par" (43).

In view of these statements, the fact that the price to be paid for the lights was fixed by the advertised "Conditions" in "*dollars*" and the value of the gas-works and buildings, though calculated in "pesetas," was reduced to "dollars" and paid for by the contractor in dollars, and the value of the two houses offered by the contractor as his "guarantee" was also appraised in "dollars," is most significant.

Article 57 of the Commercial Code in force in the island in 1875 provides:

"ART. 57. Commercial contracts shall be executed and complied with in good faith according to the terms in which they were made and drafted without evading the honest, proper, and usual significations of written or spoken words with arbitrary interpretations, nor limiting the effects which are naturally derived from the manner in which the contractors may have explained their wishes and contracted their obligations."

Article 312 of the same Code provides:

"ART. 312. If the loan consist of money, the debtor shall pay it by returning an amount equal to that received, in accordance with the legal value the money may have at the time of the return, unless there was an agreement with regard to the kind of money in which the payment was to be

made, in which case the fluctuations in value shall be lost or taken advantage of by the lender."

It may be remarked in passing that the principles relative to loans is applied throughout Spanish-speaking countries where commercial relations are controlled by code to all transactions relating to the settlement of contractual obligations in money. The principle may be stated thus: Payments must have as a basis the nominal value of the medium of payment on the day when effected or paid, though the legal value of the coin may have changed during the interval which has elapsed between the day on which the obligation was contracted and that on which the payment was made.

The following articles of the Spanish Civil Code in force in Porto Rico furnish further guidance respecting its interpretation and fulfillment.

"ART. 1091. Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations."

"ART. 1157. A debt shall not be considered as paid until the full amount of the thing has been delivered, or the presentation of which the obligation consisted has been made."

"ART. 1170. Payments of debts of money shall be made in the specie stipulated, and, should it not be possible to deliver the specie, in legal silver or gold coin current in Spain."

"ART. 1258. Contracts are perfected by mere consent, and from that time they are binding, not only with regard to the fulfillment of what has been expressly stipulated, but also with regard to all the consequences, which, according to their character, are in accordance with good faith, use and law."

Article 1170 of the Spanish Civil Code quite nearly corresponds with article 1246 of the French Civil Code, which reads as follows:

"ART. 1246. Si la dette est d'une chose qui ne soit déterminée que par son espèce, le débiteur ne sera pas tenu, pour être libéré, de la donner de la meilleure espèce; mais il ne pourra l'offrir de la plus mauvaise."

Which may reasonably be translated:

ART. 1246. If the debt consists of a thing (or is of a kind) that can only be ascertained in kind, the debtor would not be bound in discharging it to give the best of such kind nor would he be permitted to give the worst.

Having this article as a text, the French commentators have discussed it as follows:

"Lorsque la dette est d'une somme d'argent, le paiement doit être fait en espèces métalliques, d'or ou d'argent, ayant cours en France, á l'époque oú il est effectué; et ce, d'aprés la valeur nominale de ces espèces à cette époque. Il en est ainsi, lors mème que la valeur des monnaies a subi des variations depuis la formation de l'obligation; le débiteur doit toujours, malgré la baisse des monnaies, la somme numérique porté dans l'obligation; et il est, malgré leur hausse, libéré par le paiement de cette somme.

"La règle que le paiements de sommes d'argent doivent être faits d'aprés la valeur nominale des espèces á l'époque oú ils sont effectués étant fondé sur un intérêt d'ordre public, il en resulte que toute convention qui y porte directement ou indirectement atteinte, doit être régardé comme nulle."

Cours de Droit Civil Français, Aubry et Rau, vol. 4, pages 158, 159.

(When the debtconsists of a sum of money (argent) payment must be made in metallic specie—gold or silver—having currency in France at the time at which it (the debt) was incurred, and this according to the nominal value of such specie at such time; and this must be done even though the value of the money (coin) may have suffered variations since the obligation was contracted. It is the

debtor's right always, in spite of the depreciated value of the coins, (to tender) the numercial amount mentioned in the contract, and he is, in spite of its appreciated value, discharged by the payment of the same sum.

The rule that the payments of sums of money must be made according to the nominal value of the "kind" at the time the debt was contracted is in the interest of public order, and consequently every convention (agreement) which tends, either directly or indirectly, to overthrow it should be regarded as void.)

"Si l'obligation a pour objet une somme d'argent due *in genere*, le paiement doit être fait en espèces métalliques d'or ou d'argent ayant cours en France, d'aprés la valeur nominale de ces espèces au moment du payement et sans tenir compte des variations subies par les monnaies dans l'intervalle de l'obligation au payement. Si, par exemple, une loi nouvelle venait à réduirè a 4 fr. 75c. la valeur de la pièce de 5 francs, le déditeur qui, sous l'empire de l'ancienne loi, aurait emprunté 1,000 francs en pièces de 5 francs, devrait payer 210 pièces de 4 fr. 75c., plus 2 fr. 50c."

Répétitions écrites sur le Code Civil by Frédéric Mourlon., volume 2, page 749.

(If the obligation has as object a sum of money due *in genere*, the payment must be made in metallic species (coin) of gold or silver having legal currency in France, according to the nominal value of those species (coins) at the time at which the payment is effected, and without taking account of the variations suffered by the coin during the interval which has elapsed between the obligation and the payment. If, for instance, a new law ordered a reduction on the value of the 5-franc piece, viz., 4 fr. 75c., a debtor borrowing 1,000 francs under the ancient law in pieces of 5 francs must pay 210 pieces of 4 fr. 75c. and 2 fr. 50c. more.)

"Les paiements doivent avoir pour base la valeur nominale des espèces au moment oú ils sont effectués, quand méme la valeur légale des monnaies aurait changé entre le jour de la naissance de l'obligation et celui du paiement."

Commentaire Théorique et Pratique du Code Civil par Théophile Huc, volume 8, page 62.

(Payments must have as a basis the nominal value of the species at the moment at which they are effected, although the legal value of the coin may have changed between the day on which the obligation arose and the day of the payment.)

To like effect also is the comment in Précis de Droit Civil, par G. Baudry-Lecautinerie, vol. 2, p. 748.

The opinions and sentences of Spanish jurists are to like effect, as plainly appears from the various references thereto under article 57 of the Code of Commerce in force in Porto Rico, page 24 of the War Department translation (Government Printing Office, 1899).

And so also is the prevailing law of the United States as settled by this court.

Butler *vs.* Harwitz, 7 Wallace, 258.
Willard *vs.* Tayloe, 8 Wallace, 557, 574.
Treblicock *vs.* Wilson, 12 Wallace, 687.

And it is well settled that a contract made abroad to pay in "dollars," where performance is contemplated in an American port, is payable in "currency of the United States." Trecartin *vs.* The Rochambeau, 2 Clifford's Reports, 465 (Fed. Cas. 14,163); The *Quintero*, 1 Lowell, 38 (Fed Cas. 11,517). And so a bond given in 1859, payable in "dollars," was held to be payable in gold and silver only. Williamson *vs.* Richardson, Fed. Cas. 17,754.

The same rule has been upheld, in the absence of statutory provisions, by most, if not all, of the States of the United States. (See title "Payment," American Digest, Century edition, vol. 39, p. 54 *et seq.*)

It would seem, therefore, that the trial judge in charging the jury, as above set forth, with respect to the law of the

contract, in so far as payment under its express terms was concerned, was entirely correct, and that no error was committed by him either in permitting the witness Crosas to testify as to the kinds of foreign money current in Porto Rico at the date of the contract, or in refusing to permit the same witness to reply to the questions set forth in assignments of error 2 and 3, nor with respect to the language employed in his charge and excepted to under assignments of error 5, 6, and 7, nor in refusing to charge the jury as set forth in assignment of error 14.

This leaves for discussion the single question whether the parties, by a course of conduct continued through a period of years and acquiesced in by both, effected in fact a change in the terms of the contract, or, as was said by the trial judge, whether the parties, by a continued course of action, agreed "that this contract, from that time on, was payable in Porto Rican currency, or pesos. In other words, it is claimed that that written contract was changed by such verbal agreements, or different course of action—of mutual conduct."

* * *

Upon this point the testimony was as follows:

The witness Scott, on cross-examination, testified (p. 40) that from 1890 to the expiration of the contract he had "collected from the city all the moneys that the city has paid."

"Q. They paid all that was due up to the date of your bill of particulars?

"A. They never paid what was due; they always paid in Mexican money or pesos, and under verbal protest from me.

"Q. And you accepted that?

"A. I could not get anything else.

* * * * * * *

"Q. I will ask you to state whether or not about the 22d day of June, 1900, you had a settlement with the city as to the amount then due.

"A. No, I never had any settlement whatever.

* * * * * * *

"Q. Then, as I understand it, from the year 1900 you received and accepted payments from the city?

"A. As in gold.

"Q. (continued). In Porto Rican pesos because you could not get anything else?

(41.) "A. I did not; I accepted in gold; all the payments were made in American gold.

"Q. But the amounts were the amounts calculated in Porto Rican pesos?

"A. That I do not know."

"Re-direct examination" (p. 42):

"Q. In what kind of money did you receive the several payments made by the city?

"A. In American money.

"Q. Were these amounts in full of the amounts the city owed you?

"A. Certainly not; very far from it."

The witness Egozcue testified (p. 44) that he became mayor of the city of San Juan in 1900, since which time he has been continuously mayor with the exception of four months when he was a member of the legislature, the treasurer of the city by order of the mayor made the payments to Mr. Scott on behalf of the city on that contract; * * * "while the current provincial money was in existence these payments to the plaintiff company were made in that money, and from the conversion of the money into gold he was paid the amount in gold that was corresponding to it at the official rate established by the Government; previous to the change of the money Mr. Scott received no other than provincial money *at no time while I have been mayor;* neither did Mr. Scott ever make any objection to the receipt of the provincial money."

This was all of the testimony offered on the trial with respect to medium in which payments had been made, and it is apparent that the statements of the witnesses were conflicting. In this aspect of the matter the court left the question of fact to the determination of the jury, charging that body as follows (p. 53):

"* * * and I say to you that if the one had paid and the other without objection, had accepted through a course of years money of a certain kind and meant as payment of what was owing on this contract from time to time, then you may find that the parties had changed the kind of money with which the contract might be discharged, and if this was in Porto Rican pesos then the plaintiff would be only entitled to recover in American dollars, at the rate of sixty cents on the American dollar, whatever amount you may believe from the evidence he is entitled to recover—that is, if their minds met upon this subject.

"* * * If their minds met and the money was paid by the one and received by the other without protest, then that would have made a change in the kind of money the contract was to be discharged in. If the city of San Juan owed the plaintiff a certain amount for lighting and the city of San Juan offered to pay so much money, and, at the same time said to the debtor (creditor) 'I dispute your claim; this is all that I will pay on it, and you must accept this or have nothing,' and then the debtor (creditor) accepted it, it would be a settlement; but if the city of San Juan merely paid a certain amount to the debtor and the debtor protested at the time that it was not as much as he was entitled to, that would reserve his rights in the matter and he would be entitled to receive and credit that amount on the claim and then sue for the balance of it afterwards" (54).

This charge was a full and exact exposition of the controversy between the parties as it appeared from the evidence, and was certainly as favorable to the defendant as it could demand or expect.

Counsel for the plaintiff in error in arguing the exception and assignment of error covering this portion of the court's charge seems to proceed upon the assumption that the evidence was all one way, and apparently loses sight of the fact that by reason of the direct conflict in the statements of the only two witnesses who testified on the subject, the determination of the truth as to the fact was necessarily left to the jury for its decision. Neither the reference to the American and English Encyclopedia nor to the case of *Savage vs. U. S.*, 92 U. S., 382, are in point for reasons which plainly appear from a cursory inspection of the quotations themselves.

The court was clearly right in its refusal to instruct the jury in the terms set forth in assignments of error 10 and 11, for such prayers were defective in not including the very important element as to the receipt by the plaintiff of payments in depreciated currency *under protest*. I twould have been manifestly unfair and erroneous for the court to have charged the jury that the mere fact of acceptance of payment by the plaintiff in money of a certain kind and value was to be taken as cogent evidence of the meaning of the phrase "current money" appearing in the contract as understood by the parties irrespective of whether the creditor protested or not.

It was not error on the part of the court to refuse the prayers for instruction set up in assignments 12 and 15, because the very matters covered thereby had already been covered by the court in its general charge, and it is well established that no party to the cause has a right to insist upon

the trial judge charging the jury in specific words if the matter be otherwise fully taken care of.

Upon the whole case it is submitted that the judgment of the district court of the United States for the district of Puerto Rico should be affirmed with costs.

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Attorneys for the Defendant in Error.

Supreme Court of the United States.

No. 41.—October Term, 1904.

The City of San Juan, Plaintiff in Error, vs. The St. John's Gas Company, Limited. } In error to the District Court of the United States for the District of Porto Rico.

[December 12, 1904.]

The gas company, defendant in error, an English corporation, sued the city of San Juan, the plaintiff in error, to recover $14,600.60, alleged to be due for services in lighting 485 street lamps from November, 1899, to September 16, 1900. Annexed to the petition was an account showing the items from which the balance resulted. The city generally denied, and pleaded that under the contract for lighting it had at various times imposed fines upon the company for neglect of its contract duty, which fines were a set-off, and extinguished the sum sued for. A statement of account was also filed by the city, showing the alleged set-off. Both the accounts credited the gas company for lighting with $15,125.70. In the account of the gas company that company credited itself with several small items for labor and materials supplied to and materials appropriated by the city, aggregating $246.42, and for interest calculated at twelve per cent up to September 16, 1901, the items in question and the interest amounting to $2,215.96, making the total credited to the company $17,588.08. These sums were not in the account of the city. Whilst the credit items in both accounts, therefore, agreed except as above stated, there was this further difference: The account of the gas company stated that the sums to its credit were payable in gold or United States money; whilst the account of the city stated such items as payable in Porto Rican currency, declared to be worth forty per cent less than United States gold or currency. The gas company debited itself with various payments made to it by the city on account of the services rendered and for the sum of a certain ground rent, all amounting to $2,987.42, leaving in its favor the balance sued for. The city's account, whilst debiting the company with payments in United States gold to the amount stated in the gas company's account, treated the debt as being due in Porto Rican currency, and figured the payments in gold as extinguishing a larger amount by forty per cent than the face value of the gold. In addition the gas company was debited with certain fines imposed and other charges, and was moreover debited in Porto Rican money with two sums aggregating $8,836.88, amounting, if paid in gold, to $5,332.13. These two debits, it

was recited in the account, were the sums in Porto Rican money or its equivalent in gold, which the city was bound to pay to the firm of Mullenhoff & Korber, to which firm the gas company, with the consent of the city, had transferred a portion of its claims against the city in Porto Rican money, to be paid in its equivalent in gold. By the result of the debits against the gas company the items credited to it were extinguished and the account balanced. Thus the substantial difference between the two accounts arose from the fact that one stated the debt to be payable in gold or United States money, the other treated it as payable in Porto Rican currency.

Subsequently the city pleaded that it had paid to Mullenhoff & Korber the sum of $5,196.80 in United States gold, and was entitled to due credit therefor, and it was thereafter agreed between counsel that this amount had been paid under the transfer in question. As will hereafter appear, $4,337.32 of the sum was paid as the equivalent of $7,228.20 in Porto Rican currency, the amount due for street lighting up to June 1, 1900, if estimated in Porto Rico, while the balance of $859.48 was paid as satisfying the charge made for street lighting in the month of June, 1900, also consisting of a larger sum in Porto Rican money.

At the trial the undisputed proof showed that in 1875 the city made a contract, to last for twenty-five years, with one Steinacher for the lighting of the city, which contract, about 1878, was assigned to the gas company; that shortly after there was a difference between the parties as to whether the sums due under the contract were payable in Porto Rican money or in current foreign money. As a result, all the payments up to and exclusive of the items embraced in the suit were received by the gas company, under protest, in Porto Rican currency. So far as any payments made on account of the items embraced in the suit and stated in both accounts, it was undisputedly shown that they were made in United States gold. There was proof tending to show that the city in making them insisted that the gold should extinguish its equivalent amount in Porto Rican currency, whilst the company claimed that the payments should only extinguish a sum equal to the face value of the United States gold.

Concerning the transfer to the firm of Mullenhoff & Korber, and the payment made by the city to that firm, it was indisputably shown as follows: That the gas company, being in want of funds, had agreed to transfer to the firm a given portion of its claim, and applied to the city to recognize the assignment and to pay to the transferees the sum assigned, and that action was taken on this request by the city and was accepted in writing by Scott, representing the gas company, as follows:

"I, Ramon Negron Flores, secretary of the city council of the city of San Juan, hereby certify, that at the meeting held by the city council of San Juan, on the eighteenth day of this month, the following resolution was passed:

"20.—The president of the city council declared that Mr. Scott, the contractor of the public lighting for the city, and Mr. Korber, a member of the firm of Mullenhoff and Korber of this city had called on his office and stated that the amount of seven thousand two hundred and twenty-eight pesos and eighty-seven cents, Porto Rican currency, total amount of the credit due to Mr. Scott, on account of his services as contractor from Novemoer of the year one thousand eight hundred ninety-nine, to last May, being deducted the amounts already collected by the said contractor, should be delivered to the above said firm, to the credit of which Mr. Scott wishes this amount to be passed.

"The city council agreed with the declarations of the president, and passed the resolution considering the said balance of seven thousand two hundred and twenty-eight pesos with eighty cents equivalent of four thousand three hundred and thirty-seven dollars and thirty-two cents in favor of the firm Mullenhoff & Korber, being therefore the municipal corporation relieved from any compromise with Mr. Scott concerning the said amount, without any prejudice to the resolutions to be passed some time in the future, about the claims previously filed by the said contractor.

"And to begin the respective proceedings, I write and sign this declaration in San Juan of Puerto Rico this twenty-second day of June of the year one thousand nine hundred.

(Signed) R. NEGRON.

"On twenty-second June, being present Mr. Scott and Mr. Korber, the latter acting as representative of the firm, of which he is a partner, I notified them the above resolution, and they affixed their signature as a proof of their acquiesence to the same, declaring at the same time, that the amount of the account of the month of June of this year, should be recognized as due to the same firm, to which the said amount must be paid. I certify it.

(Signed) R. NEGRON.
(Signed) MULLENHOFF & KORBER.
(Signed.) L. A. SCOTT.

San Juan, June 19th, 1900.
Let it be done. The Mayor, EGOZCUE."

There was testimony, admitted without objection, tending to show that at the time the city accepted this transfer it was understood that the reservation made in the written agreement related only to fines which it was contended the city had unjustly imposed on the company. The court rejected the offer of the city to prove that the parties, by their conduct prior to the period covered by the items sued for, had interpreted the contract as meaning that the payments were to be made in Porto Rican money and not otherwise. The court also refused to instruct, at the request of the city, that the contract was payable in Porto Rican money, and charged that it provided for payment in foreign money, exclusive of Spanish gold, which was current in the island at the time the contract was made. The court further instructed that the payments made by the city to Mullenhoff & Korber in gold should be debited to the city at the face value of those payments, unless the jury found that the minds of the parties

had met on a new contract to substitute Porto Rican currency for the foreign current money stipulated by the contract. The court, moreover, refused the request of the city to charge that, if at the time of the transfer to Mullenhoff & Korber, there was a compromise entered into between the parties by which the payment to the firm of a given amount in United States currency should extinguish a larger amount of the debt due the company in Porto Rican money, that the parties were bound thereby, as to such payment. Besides, the jury were instructed that, as there was no proof concerning the fines imposed by the city upon the company as stated in the account of the city, such items must be disregarded, and that interest, as calculated in the account of the city not being exigible under the local law, must also be disregarded.

There was a verdict and judgment thereon against the city for $8,761.35, and this writ of error was prosecuted.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

In order to come to the principal controversy covered by the assignments of error we dispose of certain contentions which we deem of minor importance. We think the court was right in instructing the jury that it must disregard the items as to fines charged by the city against the gas company, because no proof was offered on the subject. Whilst it is true, as asserted in the argument, that some reference was made to such fines in the testimony of one or more of the witnesses, such reference in no sense tended to establish that the fines had been legally imposed. As to the assignment of error relating to the refusal of the court to allow testimony for the purpose of showing that even if, under the contract, payment in foreign current money was required, the contract was tacitly modified, we deem it unnecessary to express an opinion for the following reasons: The record shows that subsequent to the ruling complained of, without objection, testimony was admitted establishing that although all the payments made up to the first of the items embraced in the claim in suit, were made by the city to the gas company in Porto Rican money, nevertheless that such payments were only received by the gas company under protest, asserting its right to be paid in foreign current money. However conclusive on the gas company may have been the receipt by it of payment in a different medium from that which it asserted the contract required, the fact of the protest operated to prevent the inference that the medium actually received was admitted to be the one in which future payments should be made.

With the questions just referred to out of the way, it is apparent from the statement which we have made of the case that the record requires us to decide only two questions, First, In what money were the sums due under

the contract payable? and, second, The effect of the agreement concerning payment made by the city to Mullenhorf & Korber.

1st. *In what currency were the sums due under the contract payable?*

The contract, of which only a translation is in the record, was passed before a notary, and is voluminous, containing in minute detail a recital of all the occurrences which took place from the date of the first steps taken to make a contract and its consummation.

Excluding irrelevant details, it appears as follows:

Some time in 1874 the city advertised for bids for a contract for lighting. Proposals were received from a Mr. Steinacher and Mr. Olney. Steinacher, whilst proposing to bind himself to light lamps for three dollars monthly for each lamp, suggested that the city modify its request for proposals in several particulars, one of which was that there should be included in the contract the purchase by the contractor of gas works then owned by the city. This suggestion was accepted, and preparatory to making a call for bids, after obtaining the authority of the provincial deputation of Porto Rico, the city directed that the gas works be appraised by certain city officials. This appraisement was made as follows:

Recapitulation:	Pesetas.
Value of the buildings	19,176.25
Fixed and loose materials in the gas works	48,908.85
Fixed materials in the city	10,624.00
Total amount	78,709.10

The present appraisement amounting to 78,709.10 pesetas, or $31,741.82 of the currency in commerce.

PORTO RICO, *26th of May*, 1875.

The municipal architect.
(Signed) DOMINGO SESMERO.

The city thereupon called for new proposals. Among the many conditions exacted were, first, that the bidder should agree to light street lamps at $3 monthly for each lamp, and that payment for the same "will be made in the circulating foreign money in commerce for the value that it is received without any premium that will equalize it to the Spanish official current money;" that he should buy the gas works, appraised, as we have above stated, at $78,709.10, Porto Rico money, at its equivalent in foreign currency, $31,741.82; that the bidder should furnish a guarantee of $6,000 in cash or a bond for $9,000, to be secured by first mortgage on a house in the city, satisfactory to the municipality. Many details were provided in the conditions; as to the manner in which the contractor should perform his duties; as to fines to be imposed by the city for neglect in the quality and character of the light furnished, and for various other

delinquencies, and it was also provided "the penalties for faults in the service and supply of gas to the public will be imposed by the alcalde without appeal."

Steinacher was the only bidder in answer to this call for proposals. He offered "to take charge of the city service for the amount of $3 currency for each lamp," and to buy the buildings and apparatus, &c., for the sum of $22,000 in currency, instead of $31,741.82, as required by the requests for bids made by the city. In his proposition, moreover, Steinacher tendered two houses, stating the fact to be that one of them was encumbered by a prior mortgage in favor of the municipality, which he, Steinacher, had given to guarantee a prior contract existing between himself and the municipality. In addition, his bid suggested various modifications in the administrative provisions enumerated by the city in its conditions. The bid, not being in accord with the proposition submitted by the city, was rejected. Negotiations then ensued, the result of which was that the city yielded as to the administrative provisions, and Steinacher yielded as to the price to be paid for the gas works, it being recited in the proceedings of the city on the subject that, in order to terminate the difficulties, "Mr. Steinacher expresses himself disposed to the acquisition of the said buildings, &c., as published in the Official Gazette of the 8th of June last, for the amount of thirty-one thousand seven hundred and forty-one dollars 82 cents in currency, and to take under his charge the public light at three dollars monthly for each lamp, at same currency according to the price published." The houses tendered to secure the bond were accepted by the city, and in order to give the city a first mortgage a liquidation was had between Steinacher and the city under the prior contract, and by this liquidation it was established that Steinacher owed the city $203 in "foreign currency," which he paid. To ascertain whether the value of the houses was equal to the requirements of the city, they were appraised by the city officials in Porto Rican money, and this sum was reduced to foreign currency, and as the amount in foreign currency equalled the $9,000 required by the conditions of the city, the houses were accepted and a new mortgage for that amount was given. Under these proposals and acceptance the contract was executed, conforming in all respects to the proposals and bids as modified by the proceedings which we have narrated.

The contention that the $3 per month for lighting street lamps was payable in Porto Rican money is based on the fact that sometimes in the contract the sum to be paid is referred to as in currency without any qualification. The arguments would have cogency if the passages in the contract relied upon stood alone; but its unsoundness becomes apparent by a consideration of the context of the contract. The estimate of the property to be sold in Porto Rican money and its liquidation

in foreign currency; the terms of the bid; the proposition of Steinacher, which was accepted, to pay for the gas works at the sum of the foreign current money to which the Porto Rican money was reduced, and to do the lighting at $3 per lamp *in the same currency*, the action of the city concerning the liquidation of the prior account, and the mortgage upon the house, all demonstrate that both the proposals of the city, the acceptance by Steinacher and the contract fixed current foreign money, exclusive of Spanish gold, as the medium in which the service for lighting the street lamps was to be paid. The court, therefore, was right in its instruction as to the medium of payment required by the contract. We find, however, nothing in the contract to support the construction that it required the payment to be made in foreign current money circulating in the island at the time the contract was made, instead of money of that character circulating at the time the payments were to be made The general rule, under both the common and the civil law, is that in the absence of a stipulation to the contrary, the character of money which is current at the time fixed for performance of a contract is the medium in which payments may be made. (*Butler* v. *Horwitz*, 7 Wall. 258; *Willard* v. *Tayloe*, 8 Ib. 557; *Trebilcock* v. *Wilson*, 12 Ib. 687; Commercial Code of Porto Rico, Art. 312; Spanish Civil Code of Porto Rico, Arts. 1091, 1157, 1170; Code Nap. Art. 1246; Aubrey & Rau. vol. 4, p. 158; Mourlon, vol. 2, p. 749.)

There was, therefore, error in instructing that the time of making the contract was to be alone considered in determining the foreign current money for which the contract provided. We think, however, such error was in no sense prejudicial. This follows, because it was conceded that if foreign current money was required by the contract, money of the United States current at the time the contract was made was within the contemplation of the parties, and that such money was also current in the island at the time when performance was due. From this it results that the rights of the parties were in no way affected by the erroneous ruling.

2d. *The effect of the agreement concerning the payment made by the city to Mullenhoff & Korber.*

On the face of the written agreement between the city and the gas company it undoubtedly appears that a stated sum of money, to be paid in United States currency, was to extinguish a larger sum in Porto Rican money.

As we have seen, there was testimony tending to show, and none tending otherwise, that the reservation in the written document concerning "claims previously filed by the said contractor," and which were to be "passed some time in the future," solely related to claims for fines which the city had assessed against the gas company and the justice of which the company disputed. The city asked the court to instruct that if it was

found that at the time of the agreement it was stipulated by way of compromise that the larger sum owing at that time should be extinguished by the payment of the lesser amount, the parties were bound. This request was refused and excepted to. The court, in its general charge, in the fullest manner instructed the jury that, as the medium of payment required by the contract was foreign current money, payment in that money extinguished simply the amount paid in foreign money, unless it was found that the minds of the parties had met on an agreement engendering an entirely new contract substituting Porto Rican money for foreign currency.

It is urged by the city that error to its prejudice resulted from refusing to give the requested instruction. To sustain this proposition the doctrine is invoked that where one receives in payment a different thing or medium from that called for in the contract, such receipt is binding. Undoubtedly the general rule obtains and is based on the premise that the discharge of a contract in a different thing from that for which the contract provides, necessarily is an accord and satisfaction as to the particular payment concerning which the different thing is received. (*Sheehy* v. *Mandeville*, Cranch 263; *Very* v. *Levy*, 13 How. 357; *Bull* v. *Bull*, 43 Conn. 455; *Neal* v. *Handly*, 116 Ill. 418; *Dimmick* v. *Sexton*, 125 Pa. St. 334.)

True also is it that it has been settled by this court, (*Savage* v. *United States*, 92 U. S. 382,) that this doctrine is applicable to the receipt under protest in discharge of a particular payment of a different money medium from that which was required by the contract. Whilst we have not been referred to any Spanish authority showing that these principles obtained under the law in force in Porto Rico, as the doctrine rests upon principles known to the Roman law, (L. 17, C. De solut,) enforced under the Code Napoleon, (Journal de Palais Rèpertoire, v. 10, verbo paiement, p. 10, No. 117; Toulier, t. 12, p. 355; Duranton, t. 12, Nos. 79 and 80,) we cannot hesitate to conclude that the doctrine in question prevailed also in the Spanish civil law in force in Porto Rico. Whether it is applicable to the facts of this case? is, then, the question.

Now, whilst it may be at once conceded that the doctrine in question is applicable to the payments made in Porto Rican money, before the date of the first item sued for, it is equally clear that it cannot be applied to the payments thereafter made, including those to Mullenhoff & Korber, since they were made in United States currency. The contention that these payments in such money extinguished a larger sum than the par value of the money paid reduces itself to this: that a larger sum was satisfied by the payment of a lesser sum, because there was an agreement to that effect. The gas company in effect insists that this cannot be sustained, because of the well-established rule, "that where a liquidated sum is due the payment of a less sum in satisfaction thereof, though accepted as satisfaction, is not

binding as such for want of consideration." (*Chicago, M. & St. P. R. Co* v. *Clarke*, 178 U. S. 364, and authorities there cited.)

Conceding, without so deciding, that such rule was controlling in Porto Rico, we think it is not applicable to the case in hand. As pointed out by this court in the case just previously cited, the rule in question is subject, among others, to the well-established exception that it does not apply where, at the time of the agreement, there was a dispute between the parties, the subject matter of which dispute is embraced in the agreement to extinguish a greater by a less amount. True it is, as pointed out in *Fire Insurance Association* v. *Wickham*, (141 U. S. 564,) it must appear that the alleged dispute really existed and did not arise merely from an arbitrary denial by one party of an obligation which was obviously due. Despite the construction which we have given the contract, we think it is quite clear that the proof established that there was a *bona fide* dispute in this case. As we have seen, from the very inception of the contract the parties differed as to the medium of payment, the one—the city—insisting that it was Porto Rican money; the other—the gas company—that it was foreign current money. During a period of fully twenty years this controversy continued, and in every instance the gas company, although protesting, accepted the city's view of the contract, and by taking a different medium bound itself as to those payments despite its protest. When the period arrived when the company was no longer willing to so act and stood upon its rights as it understood them, naturally the city stood upon its asserted rights, and thus the parties were at arm's length disputing their respective rights. If there had been no agreement, the solution would have required judicial action. When in view of this dispute an agreement was reached that the payment should be made in United States currency, and that the payment should extinguish a larger amount estimated in Porto Rican currency, there was necessarily a compromise and settlement as to that payment which put the transaction so settled exactly in the position which had resulted from the action of the parties concerning the payments made during the preceding period of more than twenty years.

It follows from the foregoing that the court below erred to the prejudice of the city in refusing the instruction asked by it as to the result of the compromise, and that this error was not cured by the general charge, which instructed the jury that the compromise evidenced by the agreement must be treated as inefficacious as to the particular items to which it related, unless it was found that the minds of the parties had met on an entirely new and independent contract.

The judgment of the court below is reversed, and the cause is remanded with directions to set aside the judgment, and grant a new trial.

Reversed.